MT LEGISLATIVE HISTORY

Chapter 546 1985

Bill (H) 577 S_____ Original bill & hist. ___C

H. Committee on Judiciary

Hearing Date(s) ~~MAR~~ FEB 15 ✓C

FEB 16 ✓C

_____ ___C

_____ ___C

Date Out FEB 16 ✓C

S. Committee on Business & Industry

Hearing Date(s) MAR 14 ✓C

MAR 21 ✓C

_____ ___C

_____ ___C

MAR 21 ✓C

Did this bill originate in an interim committee? ___Yes ✓No

Committee _____ Report_____

HOUSE BILL NO. 577

INTRODUCED BY BRADLEY, RAMIREZ, HAFFEY, MARKS, JACK MOORE, KRUEGER, SPAETH, VAN VALKENBURG, M. WILLIAMS, PECK, KEENAN, J. HAMMOND, B. WILLIAMS, ADDY, THOMAS, HALLIGAN, HARP, BOYLAN, GALT, PAVLOVICH, D. BROWN, STEPHENS, B. BROWN, BACHINI, MANNING, KEYSER, O'HARA, MERCER

BY REQUEST OF THE PUBLIC SERVICE COMMISSION

IN THE HOUSE

January 31, 1985	Introduced and referred to Committee on Judiciary.
February 16, 1985	Committee recommend bill do pass as amended. Report adopted.
February 18, 1985	Bill printed and placed on members' desks.
February 19, 1985	Second reading, do pass.
February 20, 1985	Considered correctly engrossed.
February 21, 1985	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

February 22, 1985	Introduced and referred to Committee on Business and Industry.
March 21, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 23, 1985	Second reading, concurred in.
March 26, 1985	Third reading, concurred in. Ayes, 50; Noes, 0.
	Returned to House with amendments.

IN THE HOUSE

March 27, 1985	Received from Senate.
April 8, 1985	Second reading, amendments concurred in.
	On motion, rules suspended and bill placed on third reading this day.
	Third reading, amendments concurred in.
	Sent to enrolling.
	Reported correctly enrolled.

COMPENSATION FOR STATE LIBRARY COMMISSIONERS

1/31	INTRODUCED		
1/31	REFERRED TO STATE ADMINISTRATION		
2/01	FISCAL NOTE REQUESTED		
2/06	FISCAL NOTE RECEIVED		
2/13	HEARING		
2/13	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/16	2ND READING PASS	87	5
2/18	3RD READING PASS	87	12
	TRANSMITTED TO SENATE		
2/19	REFERRED TO STATE ADMINISTRATION		
3/19	HEARING		
3/25	TABLED IN COMMITTEE		

HB 577 INTRODUCED BY BRADLEY, HAFFEY, RAMIREZ, ET AL.
DEFINE REGULATED TELECOMMUNICATION SERVICE; ALLOW TRANSITION TO COMPETITION
BY REQUEST OF PUBLIC SERVICE COMMISSION

1/31	INTRODUCED		
1/31	REFERRED TO JUDICIARY		
2/15	HEARING		
2/16	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/16	STATEMENT OF INTENT ATTACHED		
2/19	2ND READING PASS	93	0
2/21	3RD READING PASS	100	0
	TRANSMITTED TO SENATE		
2/22	REFERRED TO BUSINESS & INDUSTRY		
3/14	HEARING		
3/21	COMM REPORT-BILL CONCURRED AS AMENDED		
3/23	2ND READING CONCURRED	49	0
3/26	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	94	1
4/08	ON MOTION RULES SUSPENDED PLACED ON 3RD READING THIS DAY		
4/08	3RD READING AMENDMENTS CONCURRED	97	1
4/15	SIGNED BY SPEAKER		
4/15	SIGNED BY PRESIDENT		
4/15	TRANSMITTED TO GOVERNOR		
4/18	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 546 EFFECTIVE DATE: 4/18/85		

HB 578 INTRODUCED BY KEYSER, RAMIREZ, ET AL.
SECURITIES EXEMPTION FOR CERTAIN INSURANCE POLICIES OR CONTRACTS
BY REQUEST OF SECURITIES DIVISION

1/31	INTRODUCED		
1/31	REFERRED TO BUSINESS & LABOR		
	DIED IN COMMITTEE		

HB 579 INTRODUCED BY WINSLOW
CERTIFICATION FOR VOLUNTARY ADMISSION OF MENTAL PATIENT TO STATE HOSPITAL

HOUSE BILL NO. 577

INTRODUCED BY Bradley Ramirez, Marian Hanson, Kadas, Kreuger, Vick, Walkenburg, Williams, Park, Keenan, Tenenbaum, Wanzenried, Wells, Addy, Thomas, Hallin, Hard, Boylan, Lee, Stephens, Bob Brown, Bachini, Richard Manning, Heyne, O'Hara, Mercer

BY REQUEST OF THE PUBLIC SERVICE COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING TRANSITION TO COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY; DEFINING "REGULATED TELECOMMUNICATIONS SERVICE"; AMENDING SECTIONS 69-3-101, 69-3-201, AND 69-3-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 10 and 13] may be cited as the "Montana Telecommunications Act".

NEW SECTION. Section 2. Purpose. The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining universal service, it is further the policy of this state to encourage competition in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of [sections 1 through 10 and 13] to provide a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment.

NEW SECTION. Section 3. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the public service commission.

(2) "Private telecommunications service" means a system, including the construction, maintenance, or operation thereof, for the provision of telecommunications service or any portion of such service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

(3) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport. Regulated telecommunications service does not include the provision of terminal equipment used to originate or terminate such service, private telecommunications service, resale of telecommunications service, one-way transmission

of television signals, cellular communication, or provision of radio paging or mobile radio services.

(4) "Resale of telecommunications service" means the resale of regulated telecommunications service, with or without adding value, provided any value added would not otherwise be subject to regulation.

NEW SECTION. Section 4. Exemption for private service. Construction, maintenance, or operation of a private telecommunications service does not constitute the provision of regulated telecommunications service, and a private telecommunications service is not subject to any of the provisions of this title. If any other person or entity, including the owners or shareholders of the entity owning or operating a private telecommunications service, uses the telecommunications service, whether for hire or not, the private telecommunications service is a regulated telecommunications service under [sections 1 through 10 and 13].

NEW SECTION. Section 5. Manner of regulation of telecommunications service. (1) Before any person or entity provides regulated telecommunications service within the state of Montana, it shall file with the commission a notice including:

(a) the name and address of the provider;

(b) a narrative description of the regulated

telecommunications service to be offered and the geographic area and markets to be served;

(c) initial tariffs for the regulated telecommunications service;

(d) such other information as the commission may require to accomplish the purpose of this chapter.

(2) The provision of any regulated telecommunications service does not subject the provider thereof to regulation of any other telecommunications services otherwise exempt under this chapter.

NEW SECTION. Section 6. Prohibition against cross-subsidization. (1) No provider of regulated telecommunications service may use current revenues earned or expenses incurred in conjunction with services subject to regulation under this chapter to subsidize services which are not regulated. Revenues and expenses incurred in conjunction with services not regulated under this chapter may not be attributed to or used to subsidize services which are subject to regulation for any reason.

(2) Nothing in this section is to be construed to effect the regulatory treatment of revenues, expenses, and investment for telephone directory services currently authorized under this title.

NEW SECTION. Section 7. Regulation of rates and charges. (1) As to that telecommunications service which is

provided under regulation, the commission may establish specific rates, tariffs, or fares for the provision of such service to the public. The rates, tariffs, or fares must be just, reasonable, and nondiscriminatory.

(2) Alternatively, the commission may authorize the provision of regulated telecommunications service under such terms and conditions as may best serve the declared policy of this state. The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in lieu thereof may:

(a) totally detariff the service;

(b) detariff rates for the service but retain tariffs for service standards and requirements;

(c) detariff rates but require notice of price changes to the commission and subscribers;

(d) establish only maximum rates, only minimum rates, or permissible price ranges; or

(e) provide such other rate or service regulation as will promote the purposes of {sections 2 through 10 and 13}.

(3) All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunications services are comparable if they are reasonable substitutes for one another, to the extent that subscribers generally would

accept either service as meeting their needs.

NEW SECTION. Section 8. Forbearance of rate regulation to facilitate competition. (1) In accordance with the provisions of this section, the commission shall forbear regulation as to rates, tariffs, fares, or charges to facilitate competition and shall authorize the provision of all or any portion of regulated telecommunications service under stated or negotiated terms to any person or entity that has acquired or is contemplating acquisition of, through construction, lease, or any other form of acquisition, similar telecommunications service from an alternative source.

(2) At any time, the provider of regulated telecommunications service may file a verified application with the commission for forbearance of regulation to facilitate competition. The application shall describe the telecommunications service to be offered, the customer to be served, and the party or parties offering similar service, together with such other information and in such form as the commission may prescribe. Such additional information must be reasonably related to the determination of the existence of an alternative offer but may not require information relating to the cost of providing such service.

(3) The commission shall approve or deny any such application for forbearance of regulation to facilitate

competition within 10 days after the filing of the application, except that the commission may by order defer action for an additional 5-day period. If the commission has not acted on any application within the permitted time period, the application is considered granted. The commission shall deny the application only upon a finding that the application is incomplete or that the subject or similar service is not being offered to the customer by parties other than the applicant.

(4) The provisions of 2-4-601, relating to notice and hearing, do not apply to this section.

(5) Upon approval of the application, the provider of telecommunications service may negotiate with such person or entity for the provision of such service without regard to its tariffs on file and approved by the commission.

(6) Within 10 days after the conclusion of such negotiations, the provider of regulated telecommunications service shall file with the commission the final contract or other evidence of the service to be provided, together with the charges and other conditions of the service. Thereafter, the provider of regulated telecommunications service may provide such service to the customer without regard to its tariffs on file and approved by the commission.

(7) Services provided pursuant to subsection (1)

LC 1105/01

remain subject to the regulatory powers of the commission.

NEW SECTION. Section 9. Examination of books and records. Nothing in [sections 1 through 10 and 13] precludes the commission from exercising its authority under the provisions of 69-3-202. The commission may require such accounting or reporting systems as are necessary to allow a proper allocation of investments, costs, or expenses that are joint or common to both regulated telecommunications services and other services or to both tariffed regulated telecommunications services and nontariffed regulated telecommunications services.

NEW SECTION. Section 10. Rulemaking authority. The commission may adopt rules to implement [sections 1 through 10 and 13].

Section 11. Section 69-3-101, MCA, is amended to read:

"69-3-101. Meaning of term "public utility". (1) The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(a) heat;

(b) street-railway service;

(c) light;

(d) power in any form or by any agency;

(e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

(f) ~~telegraph-------or-------telephone~~ regulated telecommunications service.

(2) The term "public utility" does not include:

(a) privately owned and operated water, sewer, or combination systems that do not serve the public; or

(b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23."

Section 12. Section 69-3-201, MCA, is amended to read:

"69-3-201. Utilities to provide adequate service at reasonable charges. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, ~~telegraph,~~ or ~~telephone~~ regulated telecommunications service produced, transmitted, delivered, or furnished or for any service to be rendered as or in connection with any public utility shall be reasonable and

just, and every unjust and unreasonable charge is prohibited and declared unlawful."

NEW SECTION. Section 13. Exception. Nothing in [this act] affects the exemption from regulation provided by 35-18-104.

Section 14. Section 69-3-321, MCA, is amended to read:

"69-3-321. Complaints against public utility -- hearing. (1) The commission shall proceed, with or without notice, to make such investigation as it may deem necessary upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club; by any body politic or municipal organization or association, the same being interested; or by any person, firm, or corporation, provided such person, firm, or corporation is directly affected thereby, that:

(a) any of the rates, tolls, charges, or schedules or any joint rate or rates are in any way unreasonable or unjustly discriminatory;

(b) any regulations, measurements, practices, or acts whatsoever affecting or relating to the production, transmission, delivery, or furnishing of heat, light, water, or power, or regulated telecommunications service, or any service in connection therewith ~~or-the-conveyance-of-any-telegraph-or-telephone-message-or-any-service-in--connection-therewith~~ is in any respect unreasonable, insufficient, or

unjustly discriminatory; or

(c) any service is inadequate.

(2) No order affecting such rates, tolls, charges, schedules, regulations, measurements, practices, or acts complained of shall be entered without a formal hearing, except the commission may issue an order to provide service to a residential consumer pending a hearing on a complaint by such consumer or by the consumer counsel on behalf of such consumer against a public utility, providing that the hearing is held within 20 days unless further delayed by consent of all parties."

NEW SECTION. Section 15. Codification instruction. Sections 1 through 10 and 13 are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to sections 1 through 10 and 13.

NEW SECTION. Section 16. Effective date. This act is effective on passage and approval.

-End-

(To be kept current post bills when entering being heard or leaving committee.) Form CS-

STATUS SHEET

FORTY-NINTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 520	1/28/85	2/11/85 2/23/85	2/23/85			2/23/85			
HB 521	1/28/85	2/1/85	2/20/85		2/1/85				
HB 522	1/28/85	2/8/85 2/14/85	2/14/85			2/14/85			
HB 529	1/28/85	2/11/35 2/22/85	2/22/85			2/22/85			
HB 528	1/28/85	2/8/85 2/16/85	2/16/85		2/16/85				
HB 531	1/29/85	2/6/85 2/8/85	2/8/85			2/8/85			
HB 532	1/29/85	2/6/85 2/8/85	2/8/85	2/8/85					
HB 533	1/29/85	2/12/85 2/20/85	2/23/85		2/20/85	AS AMENDED			
HB 536	1/29/85	2/12/85 2/20/85	2/23/85		2/20/85	Re-referred back to Comm. 2-27			
HB 541	1/29/85	2/15/85 2/16/85	2/16/85	2/16/85					
HB 547	1/29/85	2/7/85 2/8/85	2/8/85	2/8/85					
HB 557	1/29/85	2/13/85	2/13/85			2/13/85			
HB 566	1/30/85	2/8/85 2/13/85	2/13/85	(WITHOUT RECOMMENDATION AS AMENDED)					
HB 575	1/30/85	2/8/85 2/11/85	2/11/85			2/11/85			
HB 577	1/31/85	2/15/85 2/16/85	2/16/85			2/16/85			
HB 585	1/31/85	2/15/85 2/16/85	2/16/85	2/16/85					

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 15, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Friday, February 15, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Representative Bergene.

CONSIDERATION OF HOUSE BILL NO. 481: Hearing commenced on HB 481 with its sponsor, Rep. Ray Brandewie, District #49, testifying on its behalf. He said that this bill is an act which would prohibit an attorney from mentioning before a jury a sentence which may be imposed on a particular defendant. Rep. Brandewie said that this bill was introduced at the request of Judge Michael Keedy from Kalispell.

Judge Michael Keedy, district court judge from the 11th Judicial District, appeared and offered testimony in support of HB 481. He pointed out that it is not the function of the jury to be concerned about a sentence which might properly be imposed at the conclusion of the trial in the event that a defendant is convicted. That is exclusively within the province of the court to sentence according to law. It's perfectly consistent with the administration of our justice system in Montana that the division of responsibilities continue throughout the course of all criminal proceedings. The jury weighs the facts, makes the determination of a defendant's guilt or innocence, and upon the finding of a verdict of guilt, it is then the judge's sole responsibility to make the proper determination as to an appropriate sentence. Judge Keedy pointed out that the new section of the bill clarifies the statute making it improper for any lawyer representing a party in a criminal case to make reference throughout the course of the trial, voir dire examination of perspective jurors, or during the examining and cross-examining of witnesses of the sentence that may be imposed.

There being no further proponents or opponents, Rep. Brandewie closed.

The floor was opened to questions from the committee.

Rep. Krueger asked Judge Keedy if this bill is parallel to the federal rules of criminal procedure. Judge Keedy was not certain that it was.

There being no further questions, hearing closed on HB 481.

CONSIDERATION OF HOUSE BILL NOS. 380 and 577: Rep. Dorothy Bradley, District #79, appeared and offered testimony regarding these two bills. Rep. Bradley said the area of telecommunications is an enormously complicated field. She gave the committee some general history in regards to this subject. She spoke about the problems that are facing us and what the present situation is in Montana. She feels that HB 380 and 577 present several solutions. The purpose of this measure (HB 577) is to try to help Montana move from the regulated monopoly situation that it has had all these years into the competitive market, and allow competition to have its place. At the same time, the purpose of this measure would be to try to maintain universal service and keep it at an affordable rate so that no one will be thrown out of the system who is unable to afford a telephone. This legislation regulates what is referred to as a two-way switched voice grade access. She also submitted copies of Statement of Intent.

CONSIDERATION OF HOUSE BILL NO. 380: Rep. Bradley stated that under the present system, the co-ops were allowed to construct their own facilities as long as they didn't duplicate the other facilities. She said that in the "new world," (after the AT&T breakup) there are many competitors coming in. The effort taken in this measure is to free up the co-ops along with bringing up everybody else, and allow them to duplicate services just like everyone else will be duplicating services. This would allow the co-op customers to get better service at a cheaper rate.

Cal Simshaw, staff attorney for the Public Service Commission, testified in support of the bill. He said the PSC requested that HB 577 be introduced because the commission believes that the point has been reached in the evolution of telecommunications in Montana where a rewrite of the telecommunications statutes is required if the people of Montana are to participate in the benefits of competition in the industry. A copy of his testimony was marked Exhibit A and is attached.

Jack Ramirez, representative from District #87, urged the committee to support both HB 380 and HB 577.

Jim Hughes, representing Mountain Bell Telephone, testified before the committee. Mr. Hughes described to the committee what has happened in the last couple of years that has changed some of the ways in which business has been done in the past in this particular arena and how HB 577 addresses this issue.

John Scully, representing AT&T, pointed out that the efforts as addressed in HB 577 is one that needs the committee's support as a result of the compromises that have been ongoing during the last few months. He asked the committee to pass the bill.

Mary Buckley, representing MCI Telecommunications Corporation, testified as a proponent to the bill. She submitted the MCI statement (Exhibit B) which described some background on MCI. She informed the committee although MCI is not in business in Montana at present, they hope to be in the near future. In reviewing the bill, she sees some concerns that may prohibit MCI from coming into the state. They support the intent of the bill which provides competition. They also support the orderly transition into competition. However, they do not see in the bill a provision for orderly transition. There are no standards or no trigger mechanisms that would define competition. She further stated that Mountain Bell currently has 100% of the market or close thereto. If MCI were to come in and gain 2% of the market, that would not be full competition. Another concern MCI has with the bill is the portion dealing with prohibition of cross-subsidization of predatory prices. She submitted some language for the committee's consideration which she feels would tighten up this intent -- they actually made it stronger to insure that all the minimum costs, in terms of the maximum-minimum rates that are set, that the minimum costs would be cost compensatory. We feel that this is the key to avoiding predatory prices. (A copy of her suggested amendments were marked Exhibit C and attached hereto.)

Dick Thronson, general manager of Valley Real Telephone Cooperative and Valley Electric Cooperative of Glasgow, testified in support of HB 380. He addressed another problem that the cooperatives have because of the law restricting duplication of provision. In many cases because of the duplication law, they are prevented from consolidating through their own network and often prevented from using modern technology. They feel they should be allowed to compete on an equal footing with the rest of the carriers.

Jay T. Donnen, manager of the state Association of Electric and Telephone Cooperatives, testified in support of both HB 380 and HB 577.

There being no further proponents, Chairman Hannah requested the opponents to testify at this time.

OPPONENTS:

Kurt Furst, regional manager of state legislative affairs for GTE SPRINT, stated that HB 577 does contain certain positive features; however, it represents an overly broad, and an unnecessary stab at deregulation which may well harm the development of competition in Montana. A copy of his written testimony was marked Exhibit D and attached hereto. He did state that GTE SPRINT is not opposed to HB 380.

There being no further opponents, Rep. Bradley closed on both HB 380 and HB 577.

The floor was opened to questions from the committee.

In response to a question asked by Rep. Addy, Mr. Furst stated that the intent of these bills has nothing to do whatsoever with local rates. They are still regulated. The local service rates are going to go up whether this bill is passed or not. He doesn't feel that Mountain Bell would say that they don't intend to raise local rates if this bill passes.

Rep. Keyser asked Cal Simshaw if he has a problem with the time frame pointed out on page 7 of the bill. Mr. Simshaw stated that the commission does not.

Jim Paine, Montana Consumer Counsel, addressed one of Rep. Krueger's questions. He said the counsel is statutorily charged with representing the consumers of the state before the PSC and appropriate courts. Mr. Paine further stated that he supports the bill because he feels something must be done. This bill does not address the problems that are going on nationally -- the forces that are going to cause upward pressure on local exchange rates. There is not much that one is going to be able to do about the competition that is coming. He feels that it is important to allow the existing telephone companies to compete. He feels there are safeguards in the bill.

Following a period of general questioning, hearing closed on HB 380 and HB 577.

CONSIDERATION OF HOUSE BILL NO. 541: Rep. Paula Darko, District #2, testified as HB 541's chief sponsor. She informed the committee that Judge Robert M. Holter from the 19th Judicial District, requested the introduction of HB 541 due to some of the problems he was experiencing as a judge. HB 541 is an act providing that a party who unreasonably and vexatiously multiplies legal proceedings is responsible for payment of increased court costs, attorney fees, and other expenses.

Judge Robert M. Holter, 19th Judicial District, testified in support of the bill. He does not view this bill as an anti-lawyer bill; but rather, he views this as a pro-lawyer bill. He has had problems with pro se appearances, and he has had problems with lawyers who just simply conduct their proceedings by fouls.

Judge Michael Keedy, 11th Judicial District, testified in support of this bill. He pointed out that there is a tempting opportunity in nearly every litigation for a lawyer or his client or party appearing on his own behalf to abuse the judicial process to his or her convenience for tactical reasons or for personal gain or the satisfaction of vengeful motives. This bill would remedy that problem somewhat.

There being no further proponents or opponents, Rep. Darko closed. She said the bill is needed, and it is patterned after federal code.

EXHIBIT A
2/15/85
HB 380 & 577

TESTIMONY OF THE MONTANA PUBLIC SERVICE COMMISSION
IN SUPPORT OF H.B. 577

The Montana Public Service Commission requested that H.B. 577 be introduced because the Commission believes that the point has been reached in the evolution of telecommunications in Montana where a rewrite of the telecommunications statutes is required if the people of Montana are to participate in the benefits of competition in the industry. Nonetheless, H.B. 577 should not be perceived as a "competition at any cost" bill. The bill recognizes a continued role to be played by the Commission and regulation as a transition is made toward a fully competitive industry.

As is stated in Section 2, the overriding purpose of the bill is to maintain the universal availability of basic telephone service at affordable rates. Only if it can exist without jeopardizing that purpose will the bill allow untariffed competition in the provision of basic telephone service.

One of the major functions of the bill is to redefine what it is that the Commission is to regulate. The bill provides a much narrower scope of regulation than is present in the current law. The current law regulates many services that would not continue to be regulated under H.B. 577. Examples of these services include: radio common carrier and paging services, cellular mobile services, customer owned coin telephones, hotel and motel services, telephone answering services, WATS resale, and private line services. The Commission believes that these types of services need not continue to be regulated for several reasons.

Many of these services came about long after the current law was originally enacted in 1913. Therefore it is questionable whether the legislature ever intended that they be regulated. These services are for the most part highly competitive. There are sufficient market forces present that regulatory oversight is not necessary to protect consumers. By ceasing to regulate these services the Commission can refocus its regulatory resources on the area of basic telephone service. Regulatory effort can be better spent on basic services because this is the area most vital to the needs of the people and the most likely to be provided on a monopoly basis.

A second function of the bill is to provide needed regulatory flexability. Competitive situations are arising even in the area of basic telephone service. H.B. 577 would allow the Commission to evaluate whether such competition is at a level sufficient that market forces will protect consumer interests in lieu of total rate regulation. If the Commission determines this to be the case in a particular market, the bill would authorize detariffing or the setting of permissable price ranges.

Under the bill the Commission would continue to exercise total rate regulation where a monopoly still exists in the provision of basic telephone service. The bill further provides that the Commission is responsible for assuring that telephone companies do not subsidize competitive activities with revenues from monopoly services.

In summary the Commission believes that H.B. 577 would allow a focusing of regulation in the area where it is really needed and will facilitate the withdrawal of regulatory oversight in favor of healthy competition where appropriate.

EXHIBIT B
2/15/85
HB 577

MCI STATEMENT
MCI WEST

In the January 14 BUSINESS WEEK, an article stated, "The outlook for the telecommunications industry in 1985 can be summed up in one word: turmoil." That article went on to state that deregulation and the breakup of the Bell System have transformed most parts of the telecommunications industry into a free-for-all. "Companies...will have to spend megabucks in 1985 simply to ensure that they survive, if not prosper, in an inevitable business shakeout. Profits may be thin as a result. Nowhere is the competition likely to be stiffer than in $40 billion long-distance sector of the business. Moving toward cost-based pricing is creating a lot of problems, often more political than economic. In any case, the AT&T breakup is now a fact, and deregulation must be allowed to proceed."

The industry has been many years getting to this point since Congress passed the Communications Act of 1934. Many legal, regulatory, and competitive amendments have changed this concept during the intervening years. The first anti-trust suit filed by the U.S. Department of Justice occurred in 1949 and was settled in 1956 with a consent decree limiting AT&T to the provision of communications services and the manufacture of equipment to provide those services.

In 1968, the FCC "Carterfone" decision allowed other manufacturers equipment to be connected to the phone network. This was followed in 1969 by permission being granted to MCI to build and operate a microwave link providing telephone service between St. Louis and Chicago in direct competition with AT&T.

In 1974, the now famous anti-trust suit which ultimately resulted in divestiture was filed by the Department of Justice against the Bell system.

By 1977, the courts had allowed MCI and other competitive carriers to connect with the local exchange service to provide regular long distance service in direct competition with AT&T.

In 1980, the FCC decided in the "Computer Inquiry II" case that AT&T and others would be allowed to offer unregulated services and equipment only through fully separated subsidiaries. This meant that regulated portions of the company with guaranteed rates of return would not be allowed to subsidize other activities.

In 1980, the FCC embraced the concept of telecommunications competition by establishing a streamlined approach to regulation, differentiating between dominant and non-dominant carriers with regard to the application of regulations.

In 1982, AT&T entered into a consent decree terminating the anti-trust suit brought by the Department of Justice causing the divestiture of the local operating companies. That decree, known as the Modification of Final Judgment (MFJ), became the road map directing the subsequent breakup of AT&T.

The MFJ established local access transport service areas (LATAS) that apply to the Bell operating companies and not to independent phone companies. The LATAS are artificially derived areas developed within the territories served by the Bell operating companies. The LATA boundaries extend beyond the local exchange areas and within these areas the BOCs are allowed to compete. They are relevant primarily as lines of demarcation for puposes of dividing assets and other interests between AT&T and the seven regional holding companies.

In ordering the divestiture, Judge Green acknowledged that the long distance market lent itself to the development of competition. He also recognized that the previously existing monopoly relegated long distance companies other than AT&T to inferior access to the local exchange system. In order to achieve a more equal footing with AT&T's access, the judge ruled that all long distance companies be offered "equal access" to the central office of local companies. This legal requirement is only directed at the Bell operating companies and to GTE operating companies, after that company acquired Sprint. Independent telephone companies are not required to provide equal access to the other common carriers.

The process of offering equal access began in 1984 and is due to be completed according to a phased schedule in 1987. Not all Bell or GTE central offices will be affected by this conversion. Those offices with less than 10,000 station lines or those offices where such a change is not economically feasible will not offer equal access.

MCI is a relatively new player in the field of telecommunications. It was the first of the so-called "other common carriers", which were AT&T's direct competitors in the provision of long distance, intercity telecommunications service. MCI provides long distance telephone service over a network composed of microwave, fiber optic and satellite facilities, connecting with the local operating companies to originate and complete the calls.

MCI consists of a parent company, MCI Communications Corporation, and four subsidiaries: 1) MCI Telecommunications Corporation, which provides long distance telecommunications services throughout the contiguous United States, Hawaii, Puerto Rico, the Virgin Islands, and parts of Canada; 2) MCI International, which provides international record, voice and data services to over 100 countries; 3) MCI Airsignal, the fourth largest paging and mobile phone service provider in the country; and 4) MCI Digital Information Service Company, which provides specialized high speed data transmission services, including MCI Mail.

MCI was first incorporated in 1968 as Microwave Communications of America. After changing its name in 1971 to MCI Communications Corporation, the company commenced commercial operations with a single microwave route to provide telephone service between Chicago and St. Louis in January, 1972 under authority granted by the FCC.

Since 1972, MCI's steadily growing community of customers has enjoyed the benefits of lower cost telephone service and broader choice. MCI now provides interstate long distance service to almost 2 million residential customers and over 350,000 commercial customers in more than 362 cities. In addition, over 22 states have now permitted MCI to offer low cost, alternative telecommunications services on an intrastate basis.

Generally, MCI provides two main types of services: metered usage and flat rate service. The main types of metered use services are the familiar Execunet Service, which is available for both business and residential users, and MCI's Network Service, which is designed for large volume business customers and generally competes with AT&T's WATS service. In addition, MCI offers its customers alternative dedicated private line services that are offered in a number of configurations depending on the needs of the individual customer.

With its national network, MCI is the second largest interexchange carrier in the market. However, even as the second largest, MCI's business constitutes only approximately 4% of the $40 billion telecommunications market in the United States.

Despite its infancy, the new competitive environment holds benefits for all consumers. The industry will eventually be genuinely competitive, driven by the marketplace and quick to embrace technological innovations. Competition will provide the necessary incentive to streamline costs, prevent uneconomic bypass, and increase the choices available to the consumer and stimulate further economic development. It is imperative that this budding competitive development is not hampered by redundant regulation or threatened by anti-trust activity.

MCI is committed to the principles of robust competition and universal service. In order to ensure these principles, a positive regulatory environment must be created. An environment that encourages competition and promotes customer choice, while protecting ratepayers from monopoly abuses and preserving universal service.

Such an environment is founded on neither total regulation or total deregulation, but on a balanced approach. MCI believes that statewide competition should be encouraged as a matter of policy and carriers who do not possess market power should be regulated differently from those carriers who dominant the market. Ultimately, there should exist a transition towards less regulation for all carriers.

The regulatory body with jurisdiction of this issue should have the flexibility to deal individually with each carrier and have the authority to waive those restrictions that are inappropriate given the carrier's relative strength in the market place.

The FCC has adopted a streamlined regulatory approach, recognizing the relative differences in market power between the various carriers and understanding how such differences can threaten the development of true competition in the telecommunications field. Such an approach on the state level would establish consistency and create a stable environment for the non-dominant carriers. Regulatory restrictions should be limited only to those necessary to prevent abuse of market power. Adopting standards that make the distinction between a dominant and non-dominant carrier would encourage the transition to a fully competitive market.

One way to create this distinction is to base the deregulation of a telecommunications company on the existence of effective competition as to that company. This determination may be based upon a variety of factors such as the availability of equal access, the number and size of competitors, the market growth and share of competitors, and the existenc of other carriers who provide functionally equivalent service to the public at competitive rates terms and conditions.

It is undisputed that the telecommunications industry is highly capital intensive. Removal of regulatory obstacles creates an opportunity for competition to flourish, but years of planning, capital formation, construction and marketing will be required to make competition an established fact. Until competition is more than nominal, the traditional premise for regulation of a dominant carrier, the protection of the public and other providers from abuses of monopoly power, remains.

PUBLIC SERVICE COMMISSION

2701 Prospect Avenue • Helena, Montana 59620
Telephone: (406) 444-6166
Home Address: 1711 Flowerree
Helena, Montana 59601
(406) 449-6191

Danny Oberg, Commissioner
District 1

February 15, 1985

TO: Representative Dorothy Bradley
Members of House Judiciary Committee

FROM: Danny Oberg
Commissioner

RE: HB 577
Amendments

The Commission would like to clarify the intent and effect of HB 577 - the telecommunication bill now before your Committee.

I think it is regretable that the testimony before the Committee may have given the impression that the bill was designed to protect Mountain Bell and AT&T revenues and discourage the introduction of competition from companies like MCI and GTE-Sprint. The intent is just the opposite - encourage competitive telephone services wherever it makes economic sense. As written, the bill doesn't protect Mountain Bell from competition, rather it only allows the Bell companies to compete on a comparable basis with new competitors on the market.

It may protect Mountain Bell from losing all of its major customers. If a competitor can beat the Bell price because of lower costs, bypass of the Bell system should occur. Currently, Mtn Bell and the ratepayer are not protected from losing major revenues because current communication law prevents the Bell companies from competing on an equal basis with other suppliers of service like GTE-Sprint. The bill remedies this.

The Commission finds merit in two of the MCI amendments. MCI amendment #3 is designed to clarify that if detariffing occurs, the price range must indeed be cost compensatory to avoid predatory pricing. The Commission would recommend acceptance of Amendment #3 in this language:

Page 5, line 16-17

change to read: (d) establish only minimum rates, only maximum rates, or permissible price ranges so long as the minimum rates are cost compensatory.

MCI Amendment #8 is also acceptable as it serves to recognize that applicable antitrust laws will also impact the transition.

February 15, 1985 - Representative Dorothy Bradley and Members of House Judiciary Committee

The Commission strongly resists the arguments and amendments presented by MCI and Gte-Sprint to alter the forebearance from regulation as designed in Sections 7 and 8 in favor of the MCI-GTE proposal, which would prevent the Bell Company from having price flexibility to try to meet competitive bids. We believe that the regulated utility has more concern for its financial viability than to offer below cost price bids. Finally, predatory pricing on the part of Bell would expose the company shareholders to major vulnerability, as the Commission retains final review of the contract in its general rate reviews. MCI and GTE Sprint are asking the Judiciary Committee to adopt a concept that would give them an unfair bidding advantage. If Mountain Bell loses its major customers, it should be because their costs are excessive and can't compete on the basis of price, not because of regulatory restrictions.

The Commission also believes the passage of Rep. Dorothy Bradley's other bill, HB 380, is an appropriate legislative response to divestiture and supports its enactment into law. We believe both bills are important and can stand on their own merits.

In summary, we believe HB 577 is in the public interest and creates the groundwork the Commission needs to deliver the benefits of the new competitive telecommunication era to the ratepayer. If this bill fails, the ratepayer will see few benefits and only major costs from divestiture.

EXHIBIT C
2/15/85
HB 577

Suggested amendments for HB 577:

1) Page 2, line 19

change to: "communications which originate and terminate"

2) Page 2, line 23

change to: provision of customer premise terminal equipment used to originate or terminate such service

3) Page 5, line 16-17

change to read: (d) establish only minimum rates, or permissible price ranges so long as the minimum rate is fully compensatory.

4) Page 6, line 6

change "shall" to "may"

5) Page 7, line 5

delete: "The commission shall deny the application only upon a finding that"

insert: "In considering the application, the commission shall review all relevant factors including, but not to limited to, the effect of forbearance on the regulated revenue requirements of the company making the application, whether the application is incomplete, or whether the subject or similiar service is not being offered to the customer by parties other than the applicant."

6) Page 7, line 17

insert: ...negotiations, and prior to the execution of any contract, the provider of regulated telecommunications service shall file with the commission the proposed final contract...

7) Page 8, line 1

insert (after the sentence): "Revenues and expenses incurred in the providing of services under this section shall not be attributed to or be subsidized by services that are not regulated."

8) Page 11, add New Section:

Nothing in this chapter shall in anyway preempta, abrogate or effect any right, liability, or obligation arising from any federal or state law regarding unfair business practices or anti-competitive activity.

EXHIBIT D
2/15/85
HB 577

TESTIMONY OF KURT FURST

GTE SPRINT

BEFORE THE MONTANA STATE LEGISLATURE

SENATE JUDICIARY COMMITTEE

FEBRUARY 15, 1985

Hello Mr. Chairman and members of the Committee. My name is Kurt Furst and I am Regional Manager of State Legislative Affairs for GTE SPRINT. I appreciate this opportunity to appear before the Committee to highlight for you some of SPRINT's views on the proper approach towards achieving an orderly transition to full and fair competition.

By way of background, SPRINT is a long distance telephone company which serves more than a million customers in homes and businesses nationwide. Our services are available in over 360 metropolitan areas in the United States and SPRINT interstate calls may be made to any telephone in the country. For the record, SPRINT has not yet sought authority to offer intra-state service in Montana.

As I will mention, HB 577 does contain certain positive features. Overall, however, it represents an overly broad, and, at the this, unnecessary stab at deregulation which may well

harm the development of competition in Montana. Sprint does agree with the bill goal of introducing competition into Montana by way of "an orderly transition." This approach recognizes the many changes occurring in the industry today.

The bill before you today is premised on the belief that competition in telecommunications markets, to the extent it is consistent with universal service, is to be encouraged. Competition is recognized as the best way to assure consumers access to the rapid advances being made in telecommunications. In the long distance telephone market, this means lower cost and a wider array of services.

The bill correctly recognizes that the movement towards a truly competitive marketplace requires an orderly transition. Until full blown competition exists, SPRINT believes certain regulatory protections, which are absent from the bill, must be maintained.

The bill fails to recognize certain basic facts and thus fails to ensure the orderly development of effective competition in Montana. Some telecommunications providers, due to factors such as a long history, captive customers, and provision of monopoly services are dominant. These companies

are not competitive and have the ability to singlehandedly influence market prices to the detriment of competition. These companies and their services should not be deregulated. To the extent any deregulation is undertaken, the Commission must be provided specific guidelines so it can ensure there is indeed effective competition.

Again, we appreciate this opportunity to highlight some of SPRINT's concerns. We hope to work with the committee and its staff if it chooses to move forward and further develop appropriate legislation. I would be happy to respond to any questions you might have.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

EXECUTIVE SESSION - 7:00 a.m.

Date 2-15-85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser			✓
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/15/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene		✓	
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. 577 380 (Rep. Bradley); ~~481 (Rep. Brandewie);~~ DATE 2/15/85

SPONSOR 541 (Rep. Darko); 585 (Rep. Gould)

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Jim Lockhart	Helena - Mtn. Bell	577 ✓	
Calvin Simshaw	PSC - Helena	577	
Mary Buckley	Denver - MCI	577 w/amendments	
Kurt Fussi	Kansas City GTE Sprint	577	✓
MICHAEL H. KEEDY	KALISPELL	541 481 585	
JAY T. DOWNEN	GT. FALLS	577 380	
Robert M. Holter	Box 974, Libby	541	
Richard J. THORSON	BOX-392 GLASGOW	577 380	
R.A. Little	538 6th Helena	577	
Eugene Anderson	Fairfield		
Russ Cravens	Helena		
Jim NYS	Helena		473
Teresa Graham	Helena		473
Bob Kaye	Helena		473
Tom R. Lindsay	Helena	473	
Tick Brown	Helena	473	
[illegible]	Hln-nc	380	
[illegible]	Helena	380	
[illegible]	[illegible]		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

585

Karen Sedlock Supreme Court

John Scully Bozeman AT&T 577

CS-33

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 16, 1985

An executive session of the Judiciary Committee was called to order by Chariman Tom Hannah on Saturday, February 16, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Montayne and Rep. Brown. (Rep. Brown arrived later).

ACTION ON HOUSE BILL NO. 577: Rep. O'Hara moved that HB 577 DO PASS. The motion included adopting the Statement of Intent. The motion was seconded by Rep. Gould.

Rep. Addy moved to amend the bill as follows: Page 5, line 17 following "ranges" insert "so long as the minimum rate is fully compensatory". On page 11, following line 11 insert: "NEW SECTION. Section 15. No preemption of laws governing anti-competitive activity. Nothing in (Sections 1 through 10 and 13) in any way preempts, abrogates, or otherwise affects any right, liability, or obligation arising from any federal or state law regarding unfair business practices or anticompetitive activity." The motion was seconded by Rep. Darko and carried with Rep. Keyser dissenting.

Rep. Addy moved that HB 577 DO PASS AS AMENDED. The motion was seconded by Rep. Gould, and discussion followed.

Rep. Keyser feels the bill should pass because regulations should be placed before the various companies find themselves involved in a lawsuit. The question was called, and motion to pass as amended carried unanimously.

ACTION ON HOUSE BILL NO. 380: Rep. O'Hara moved that HB 380 DO PASS. The motion was seconded by Rep. Miles. The question was called, and the motion carried unanimously.

ACTION ON HOUSE BILL NO. 481: Rep. Keyser moved that HB 481 DO PASS. The motion was seconded by Rep. O'Hara, and carried unanimously.

ACTION ON HOUSE BILL NO. 541: Rep. Darko moved that HB 541 DO PASS. The motion was seconded by Rep. Mercer and carried unanimously.

ACTION ON HOUSE BILL NO. 585: Rep. Gould moved that HB 585 DO PASS. The motion was seconded by Rep. O'Hara and discussed.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

EXECUTIVE SESSION - 7:00 a.m.

Date 2/16/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne		✓	
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/16/85

EXECUTIVE SESSION - 12:20 p.m.

NAME	PRESENT	ABSENT	EXCUSE
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles			✓
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

February 16 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 377

FIRST reading copy (WHITE color)

DEFINE REGULATED TELECOMMUNICATION SERVICE; ALLOW TRANSITION TO COMPETITION

Respectfully report as follows: That HOUSE Bill No. 377

be amended as follows:

1. Page 5, line 17.
Following: "ranges"
Insert: "so long as the minimum rate is fully compensatory"
as

2. Page 11, following line 11.
Insert: "NEW SECTION. Section 15. No preemption of laws governing anti-competitive activity. Nothing in [Sections 1 through 10 and 13] in any way preempts, abrogates, or otherwise affects any right, liability, or obligation arising from any federal or state law regarding unfair business practices or anti-competitive activity."

Renumber subsequent sections.

AND AS AMENDED,

DO PASS

STATEMENT OF INTENT ATTACHED

REP. TOM HANNAH Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STATEMENT OF INTENT
BILL NO. 577

As stated in the purpose section of this act, it is the intent of the legislature to maintain universal availability of basic telecommunications service at affordable rates. At the same time, the legislature desires to make available to the general public the rapid advances in telecommunications technology brought about by competition. It is the intent of this act to provide the regulatory flexibility necessary to allow a transition to a competitive market environment in the telecommunications industry.

Under prior law there was no mechanism that would allow telecommunications utilities to respond to competitive situations. It is the intent of the legislature that the public service commission now have the authority to permit flexible pricing in those instances where it will promote healthy competition. For example, if two telecommunications utilities are effectively competing to provide long distance service to a market, the commission may allow those companies to change their rates without commission approval in response to competition. Depending upon the circumstances, the commission may detariff rates for the competitive services or allow the telecommunications utilities to operate within permissible price ranges or implement some other form of regulation that is less restrictive than total rate regulation.

The legislature intends that the commission retain the power to protect ratepayer interests by totally regulating the rates for telecommunications services that are provided on a monopoly basis. It is intended that the commission be authorized to examine each service and market to determine when market conditions rather than total rate regulation can be relied upon to assure that adequate service will be provided at reasonable rates.

It is further intended that the commission have authority to take those actions necessary to assure that revenues from regulated telecommunications services are not used to subsidize nonregulated operations.

It is intended that the commission have authority to adopt rules, if needed, to develop standards for evaluating market conditions and criteria for determining that detariffing or rate flexibility is appropriate. The commission may also implement, by rule if necessary, such reporting requirements as are required to permit a proper allocation of common or joint costs and investments.

REP. TOM HANNAH Chairman.

STATE PUB. CO.
Helena, Mont.

STATEMENT OF INTENT

HOUSE BILL 577

House Judiciary Committee

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It is intended that the commission have authority to adopt rules, if needed, to develop standards for evaluating market conditions and criteria for determining that detariffing or rate flexibility is appropriate. The commission may also implement, by rule if necessary, such reporting requirements as are required to permit a proper allocation of common or joint costs and investments.

THIRD READING

HB 577

HOUSE BILL NO. 577

INTRODUCED BY BRADLEY, RAMIREZ, HAFFEY, MARKS, JACK MOORE, KRUEGER, SPAETH, VAN VALKENBURG, M. WILLIAMS, PECK, KEENAN, J. HAMMOND, B. WILLIAMS, ADDY, THOMAS, HALLIGAN, HARP, BOYLAN, GALT, PAVLOVICH, D. BROWN, STEPHENS, B. BROWN, BACHINI, MANNING, KEYSER, O'HARA, MERCER

BY REQUEST OF THE PUBLIC SERVICE COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING TRANSITION TO COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY; DEFINING "REGULATED TELECOMMUNICATIONS SERVICE"; AMENDING SECTIONS 69-3-101, 69-3-201, AND 69-3-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 10 and 13] may be cited as the "Montana Telecommunications Act".

NEW SECTION. Section 2. Purpose. The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining universal service, it is further the policy of this state to encourage competition in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of [sections 1 through 10 and 13] to provide a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment.

NEW SECTION. Section 3. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the public service commission.

(2) "Private telecommunications service" means a system, including the construction, maintenance, or operation thereof, for the provision of telecommunications service or any portion of such service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

(3) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and

nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport. Regulated telecommunications service does not include the provision of terminal equipment used to originate or terminate such service, private telecommunications service, resale of telecommunications service, one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

(4) "Resale of telecommunications service" means the resale of regulated telecommunications service, with or without adding value, provided any value added would not otherwise be subject to regulation.

NEW SECTION. Section 4. Exemption for private service. Construction, maintenance, or operation of a private telecommunications service does not constitute the provision of regulated telecommunications service, and a private telecommunications service is not subject to any of the provisions of this title. If any other person or entity, including the owners or shareholders of the entity owning or operating a private telecommunications service, uses the telecommunications service, whether for hire or not, the private telecommunications service is a regulated telecommunications service under [sections 1 through 10 and 13].

NEW SECTION. Section 5. Manner of regulation of

telecommunications service. (1) Before any person or entity provides regulated telecommunications service within the state of Montana, it shall file with the commission a notice including:

(a) the name and address of the provider;

(b) a narrative description of the regulated telecommunications service to be offered and the geographic area and markets to be served;

(c) initial tariffs for the regulated telecommunications service;

(d) such other information as the commission may require to accomplish the purpose of this chapter.

(2) The provision of any regulated telecommunications service does not subject the provider thereof to regulation of any other telecommunications services otherwise exempt under this chapter.

NEW SECTION. Section 6. Prohibition against cross-subsidization. (1) No provider of regulated telecommunications service may use current revenues earned or expenses incurred in conjunction with services subject to regulation under this chapter to subsidize services which are not regulated. Revenues and expenses incurred in conjunction with services not regulated under this chapter may not be attributed to or used to subsidize services which are subject to regulation for any reason.

(2) Nothing in this section is to be construed to effect the regulatory treatment of revenues, expenses, and investment for telephone directory services currently authorized under this title.

NEW SECTION. Section 7. Regulation of rates and charges. (1) As to that telecommunications service which is provided under regulation, the commission may establish specific rates, tariffs, or fares for the provision of such service to the public. The rates, tariffs, or fares must be just, reasonable, and nondiscriminatory.

(2) Alternatively, the commission may authorize the provision of regulated telecommunications service under such terms and conditions as may best serve the declared policy of this state. The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in lieu thereof may:

(a) totally detariff the service;

(b) detariff rates for the service but retain tariffs for service standards and requirements;

(c) detariff rates but require notice of price changes to the commission and subscribers;

(d) establish only maximum rates, only minimum rates, or permissible price ranges AS LONG AS THE MINIMUM RATE IS FULLY COMPENSATORY; or

(e) provide such other rate or service regulation as

will promote the purposes of [sections 2 through 10 and 13].

(3) All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunications services are comparable if they are reasonable substitutes for one another, to the extent that subscribers generally would accept either service as meeting their needs.

NEW SECTION. Section 8. Forbearance of rate regulation to facilitate competition. (1) In accordance with the provisions of this section, the commission shall forbear regulation as to rates, tariffs, fares, or charges to facilitate competition and shall authorize the provision of all or any portion of regulated telecommunications service under stated or negotiated terms to any person or entity that has acquired or is contemplating acquisition of, through construction, lease, or any other form of acquisition, similar telecommunications service from an alternative source.

(2) At any time, the provider of regulated telecommunications service may file a verified application with the commission for forbearance of regulation to facilitate competition. The application shall describe the telecommunications service to be offered, the customer to be served, and the party or parties offering similar service,

together with such other information and in such form as the commission may prescribe. Such additional information must be reasonably related to the determination of the existence of an alternative offer but may not require information relating to the cost of providing such service.

(3) The commission shall approve or deny any such application for forbearance of regulation to facilitate competition within 10 days after the filing of the application, except that the commission may by order defer action for an additional 5-day period. If the commission has not acted on any application within the permitted time period, the application is considered granted. The commission shall deny the application only upon a finding that the application is incomplete or that the subject or similar service is not being offered to the customer by parties other than the applicant.

(4) The provisions of 2-4-601, relating to notice and hearing, do not apply to this section.

(5) Upon approval of the application, the provider of telecommunications service may negotiate with such person or entity for the provision of such service without regard to its tariffs on file and approved by the commission.

(6) Within 10 days after the conclusion of such negotiations, the provider of regulated telecommunications service shall file with the commission the final contract or

other evidence of the service to be provided, together with the charges and other conditions of the service. Thereafter, the provider of regulated telecommunications service may provide such service to the customer without regard to its tariffs on file and approved by the commission.

(7) Services provided pursuant to subsection (1) remain subject to the regulatory powers of the commission.

NEW SECTION. Section 9. Examination of books and records. Nothing in [sections 1 through 10 and 13] precludes the commission from exercising its authority under the provisions of 69-3-202. The commission may require such accounting or reporting systems as are necessary to allow a proper allocation of investments, costs, or expenses that are joint or common to both regulated telecommunications services and other services or to both tariffed regulated telecommunications services and nontariffed regulated telecommunications services.

NEW SECTION. Section 10. Rulemaking authority. The commission may adopt rules to implement [sections 1 through 10 and 13].

Section 11. Section 69-3-101, MCA, is amended to read:

"69-3-101. Meaning of term "public utility". (1) The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private,

company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(a) heat;

(b) street-railway service;

(c) light;

(d) power in any form or by any agency;

(e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

(f) ~~telegraph-------or-------telephone~~ regulated telecommunications service.

(2) The term "public utility" does not include:

(a) privately owned and operated water, sewer, or combination systems that do not serve the public; or

(b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23."

Section 12. Section 69-3-201, MCA, is amended to read:

"69-3-201. Utilities to provide adequate service at

reasonable charges. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, ~~telegraph,~~ or ~~telephone~~ regulated telecommunications service produced, transmitted, delivered, or furnished or for any service to be rendered as or in connection with any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful."

NEW SECTION. Section 13. Exception. Nothing in [this act] affects the exemption from regulation provided by 35-18-104.

Section 14. Section 69-3-321, MCA, is amended to read:

"69-3-321. Complaints against public utility -- hearing. (1) The commission shall proceed, with or without notice, to make such investigation as it may deem necessary upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club; by any body politic or municipal organization or association, the same being interested; or by any person, firm, or corporation, provided such person, firm, or corporation is directly affected thereby, that:

(a) any of the rates, tolls, charges, or schedules or any joint rate or rates are in any way unreasonable or unjustly discriminatory;

(b) any regulations, measurements, practices, or acts whatsoever affecting or relating to the production, transmission, delivery, or furnishing of heat, light, water, ~~or~~ power, or regulated telecommunications service, or any service in connection therewith ~~or--the--conveyance--of--any telegraph--or-telephone-message-or-any-service-in-connection therewith~~ is in any respect unreasonable, insufficient, or unjustly discriminatory; or

(c) any service is inadequate.

(2) No order affecting such rates, tolls, charges, schedules, regulations, measurements, practices, or acts complained of shall be entered without a formal hearing, except the commission may issue an order to provide service to a residential consumer pending a hearing on a complaint by such consumer or by the consumer counsel on behalf of such consumer against a public utility, providing that the hearing is held within 20 days unless further delayed by consent of all parties."

NEW SECTION. SECTION 15. NO PREEMPTION OF LAWS GOVERNING ANTICOMPETITIVE ACTIVITY. NOTHING IN [SECTIONS 1 THROUGH 10 AND 13] IN ANY WAY PREEMPTS, ABROGATES, OR OTHERWISE AFFECTS ANY RIGHT, LIABILITY, OR OBLIGATION ARISING FROM ANY FEDERAL OR STATE LAW REGARDING UNFAIR BUSINESS PRACTICES OR ANTICOMPETITIVE ACTIVITY.

NEW SECTION. Section 16. Codification instruction.

Sections 1 through 10 and 13 are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to sections 1 through 10 and 13.

NEW SECTION. Section 17. Effective date. This act is effective on passage and approval.

-End-

STANDING COMMITTEE REPORT

SENATE

MARCH 21 19 85

Page 1 of 2

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration HOUSE BILL No. 577

third reading copy (blue color)

DEFINE REGULATED TELECOMMUNICATION SERVICE; ALLOW TRANSITION TO COMPETITION (Haffey)

Respectfully report as follows: That HOUSE BILL No. 577

be amended as follows:

1. Page 3, line 13.
Following: "private"
Insert: "telecommunications"

2. Page 3, line 24.
Following: "13]."
Insert: "An occasional or accomodative use of a private telecommunication system by a third person is not a violation of this section."

3. Page 4, line 22.
Following: "regulated"
Insert: "or are not tariffed"
Following: "."
Strike: "Revenues and expenses"
Insert: "Expenses"

4. Page 4, line 23.
Following: "regulated"
Insert: "or not tariffed"

5. Page 4, line 24.
Following: "attributed to"
Strike: "or used to subsidize"

(continued on page 2)

~~DO PASS~~
~~XXXXXX~~

~~XXXXXXXXX~~
~~XXXXXXXXX~~

Chairman.

6. Page 5, line 24.
Following: line 23
Strike: "FULLY"
Insert: "cost"

7. Page 6, line 2.
Following: line 1
Insert: "(3) In determining applications under subsection (2), the commission shall consider the following factors: (a) the number, size, and distribution of alternative providers of service; (b) the extent to which services are available from alternative providers in the relevant market; (c) the ability of alternative providers to make functionally equivalent or substitute services readily available; (d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and (e) such other factors as the commission may prescribe through rulemaking which are appropriate to fulfill the purposes of [the act]. (4) Nothing in this section shall authorize the application of subsection (2) to any services for which there are no alternative providers of such services."
Renumber: subsequent subsection

8. Page 6, lines 6 through 8.
Following: "comparable" on line 6
Strike: remainder of line 6 through "needs" on line 8
Insert: "to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available"

AND AS AMENDED
BE CONCURRED IN

Sen. Mike Halligan, Chairman

CHAIRMAN--HALLIGAN, MIKE
NORMAL SCHEDULE==> SITE: ROOM 410 DAYS: M-TU-W-TH-F TIME: 10:00 A.M.-12 NOON

SECRETARY-DUVAL, CAROL

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0567	3/05	3/21	3/26	CONCUR AS AMENDED		3/26
SCHULTZ, JAMES M.			REQUIRE WRITTEN NOTICE OF CANCELLATION OF LIFE & HEALTH INSURANCE POLICIES			
HB0568	3/04	3/07		CONCUR		3/7
MOORE, JACK K.			7-DAY CREDIT LIMIT ON TOBACCO SALES			
HB0571	3/08	3/20	3/25 3/27	CONCUR AS AMENDED		3/27
BERGENE, TONI R.			MANDATORY LICENSING & REGULATION OF PROFESSIONAL COUNSELORS			
HB0574	2/19	3/18	3/27	CONCUR AS AMENDED		3/27
THOMAS, FRED			LETS PUBLIC UTILITIES CORRECT CUSTOMER BILLING ERRORS BY BACKBILLING 6 MOS.			
HB0577	2/22	3/14	3/21	CONCUR AS AMENDED		3/21
BRADLEY, DOROTHY			DEFINE REGULATED TELECOMMUNICATION SERVICE; ALLOW TRANSITION TO COMPETITION			
HB0598	2/21	3/26	3/27	ADVERSE REPORT		3/27
ASAY, TOM			GIVES PETROLEUM WHOLESALE DISTRIBUTORS SEMI-ANNUAL OPTION ON PRODUCT MEASURE			
HB0602	2/13	3/13	3/14 3/19	CONCUR AS AMENDED		3/19
FRITZ, HARRY			ARTIST-ART DEALER RELATIONSHIP			
HB0606	2/21	3/21		CONCUR		3/21
CAMPBELL, BUD			CLARIFY LAWS ON SALE & DISTRIBUTION OF MOTOR VEHICLES; PROVIDE CIVIL PENALTY			
HB0618	2/19	3/15		CONCUR		3/15
SANDS, JACK			TO RAISE THE LEGAL INTEREST RATE FROM SIX PERCENT TO TEN PERCENT			
HB0658	2/21	3/21		CONCUR		3/21
RAMIREZ, JACK			CREATE JOINT UNDERWRITING ASSOCIATION FOR MEDICAL LIABILITY INSURANCE			
HB0662	2/21	3/21		CONCUR		3/21
KEYSER, KERRY R.			DEFINING SCOPE OF MONTANA SECURITIES LAW			

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 14, 1985

The thirty-eighth meeting of the Business & Industry Committee met on March 14, 1985 at 10 a.m. in Room 410. The meeting was called to order by Chairman Mike Halligan.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL 852: Representative John Harp, House District #7, Flathead, is the chief sponsor of this bill which provides for an exemption for certain persons from regulation as a public utility. It is basically a financing tool that will allow a utility to utilize an investment group to purchase interest in a utility, invest this and would eventually be leased back to the utility. The PSC would be involved in the definition of the person being exempted and make sure that any regulations as far as interstate activities would be governed by the PSC and any out of state activities would be governed by the FIRC. It would expedite the current problems Montana Power is having with Colstrip 4.

PROPONENTS: Bob Gannon, Vice-President and General Counsel for Montana Power, feels this bill is necessary because of Colstrip #4 which has power that will not be needed until the early 1990's. It had been anticipated that there would be a substantial load come on line at that time but since the closure of Ananconda's smelter and in Butte this power will no longer be necessary and there will be an excess that they feel could now be marketed to out of state utilities. Because of federal tax regulations relating to investment tax credits and accelerated depreciation they feel an outside investor with substantial income could take advantage of this situation and by doing so it would help to reduce the cost of mill power. Montana law currently has a very broad definition of investors and they could therefore become a public utility and because of this it has kept potential investors away. This bill would help clarify this situation. He noted that in a transaction such as this, that the person investing would still be subject to the rate regulations of the PSC or the federal regulatory commission.

Opal Winebrenner, Attorney with the PSC, stated they have been working with Montana Power on this bill and feel the exemption being proposed is what is necessary and supports the bill.

Jim Payne, from the Counsumer Council Office, also supports the bill. It would assure potential investors that they would not become regulated utilities and allow them to obtain financing while still keeping the PSC involved. They are in support of the measure.

OPPONENTS: There were none.

Questions were then called for from the committee members. Senator Weeding wondered if Montana Power was in a position to be able to

utilize this type of tax credit. Bob Gannon explained they were not able to do so because of their financial situation. Senator Gage wondered if they had checked out leasing the plant as opposed to leasing with an option to buy. He explained that the federal laws on leasing are very strict and Montana Power will be able to retain the option of being able to buy back the facilities in 25 years at a fair market value. Senator Boylan wondered if this would end up the same as a holding company. Bob Gannon felt it was not the same. Senator Christiaens wondered if it was an open end lease. Bob Gannon explained it is a lease with the ability to acquire the assets at the end of 25 years at a fair market value. Senator Williams wondered if this could possibly lower rates per kilowatt hour and was told it possibly could. Senator Thayer asked about the tax credit and was told it was a 15 year depreciation accelerated for 15 years on approximately $300 million. The hearing was closed by Representative Harp on House Bill 852.

DISPOSITION OF HOUSE BILL 852: Senator Goodover MOVED THAT HOUSE BILL 852 BE CONCURRED IN. The motion carried. Senator Jacobson will carry the bill on the Senate floor.

CONSIDERATION OF HOUSE BILL 380 and 577: Representative Dorothy Bradley, House District #79 of Bozeman, is the chief sponsor of these two bills. She explained the Consumer Council, AT & T and Mountain Bell have all joined together to draft these measures. She gave a brief history of the telecommunications industry. She noted that a nationwide communications system has been created through a regulated monopoly so that one entity was guaranteed all of the business in return for government regulations and then a ceiling was put on the profits. Some twenty years ago there were some who felt they wanted to enter into the market also. A seven year antitrust suit followed and some new federal regulations were passed. This allowed AT & T out of their "fence" and allowed other kinds of competition to enter into the market. Mountain Bell is now a separate entity from A T & T. Montana is susceptible to the problems because of there being no requirement for a certificate of public convenience and necessity so a competitor can just move in. Montana is divided into two areas called LATTA and this just means that when a phone call crosses over this line that A T & T is entitled to that business and this is the reason you are billed separately when a call crosses that line. With the present situation anyone can come in and make a long distance trunk line and "skim off the cream" where there is a high volume. Mountain Bell feels they are at a disadvantage because they are required to serve all the local exchanges. These competitors can charge cheaper long distance rates and they still have their fixed costs and would be left dividing up the rates with fewer customers. The coops are in somewhat the same situation. House Bill 577 moves away from regulated monopolies and into more competitive markets. It would just give clarification of what is regulated and what is not. Private telecommunications are not regulated nor are resales. The bill would provide that before you can provide regulated service you have to file a notice with the PSC. Cross-subsidization would be prohibited and clarified in the bill. The PSC would be allowed to tariff or detariff rates. She noted that this is different than

deregulation because the PSC still retains different areas of authority. It does allow competition of rates however.

House Bill 380 deals with coops. In present law they would not duplicate the areas that Mountain Bell had already but this would free them up so they can compete with the rest of the competition. If you live in a city you might be able to benefit from the competition but for many others in rural areas especially she feels the rates are going to keep going up. She hopes by allowing some flexibility this will compensate.

Some of the arguments that MCI and SPRINT have raised include that they would like to postpone the time for detariffing because it would give them more time to become established. They fear predatory pricing from the giants. She felt though that detariffing would be to their advantage. Predatory pricing is not legal anyway. The PSC will see that this does not happen.

Another argument is that there is no criteria for detariffing. She felt the legislature was not the body to decide that and felt this should lie with the PSC. She felt if the state waits for two more years it would just tie the hands of Mountain Bell and she felt the consumers will be hurt. She felt the amendments being proposed in the legislation by MCI would put Mountain Bell at a disadvantage and if we want competition we should not tie the hands of one or the other.

PROPONENTS: Joan Mandeville, of Helena, representing PSC, feels it has come to the point that a rewrite of legislation is necessary. The bill would assure that a continued role will be played by the PSC and provide regulation as a transition to a fully competitive industry. It would define what needs to be regulated and provide needed regulatory flexibility. (EXHIBIT 1) She explained that the amendment proposed would just strike the word "fully" before compensatory on page 5, line 24. (EXHIBIT 2)

Jim Hughes, Mountain Bell, gave an overview of what is happening today in the industry. He noted the services they used to provide and what they provide today since divesture. They are now primarily a local service company. He noted that the LATTA division in the state only serves one purpose and that is to inhibit Mountain Bell from providing service between the two areas. He gave an explanation of the regulatory balancing act where you raise the prices in one area to compensate for costs in another area. The competition for business is really in the long distance service and private lines areas. They would like to see fair play and see some flexibility for their company also. He felt residential rates are going to have to go up to what they actually cost eventually. MCI and SPRINT are just two of the entities trying to get long distance customers. The way the present law stands, Mountain Bell just cannot compete. There have been some real compromises made to resolve this dilemma.

Jim Payne, Montana Consumer Council, feels if this legislation passes every time a regulated telephone agency came before them they would be checked out closely and if there was a disagreement on costs,

they would propose an adjustment be made. They are in favor of this legislation.

Jay Dowen, representing the telephone cooperatives, and John Scully representing A T & T were present also and in support of the legislation.

OPPONENTS: Woodside Wright, speaking on behalf of GTE SPRINT, disagrees with the legislation proposed. They feel that House Bill 577 will recreate the monopoly without regulatory oversight and would result in the prevention of Montana citizens from receiving competitive low cost long distance rates. They feel that an interim study should be done instead. (EXHIBIT 3) He felt the statute grants rulemaking authority and felt some guidelines should be established beforehand. He feels there is no effective method of challenge. He felt money could be better spent in developing good services rather than fighting an antitrust suit. He urged consideration of questions on his handout before consideration.

Mary Bulkley, with the West Division of MCI Telecommunications Corporation, distributed a copy of her testimony, some newspaper clippings, a chart of how MCI provides long distance service and some amendments they would like proposed to House Bill 577.

She noted MCI has no monopoly offerings or other sources of market power. She felt that this bill would attempt to regulate all services in the same manner and they feel they lack the power to participate in the behavior that causes regulation to be necessary. She thinks the bill is just too broad to prevent potential market power abuses and does not give the commission clear guidance as to how policy should be addressed. (EXHIBIT 4) She explained they have no network established yet in the state and would be at a disadvantag until they were established.

Questions were then asked from the committee members. Senator Weeding asked Jay Dowen from the rural cooperatives to respond. He noted they had suggested 12 changes and all of these had been incorporated into the bill. He felt it was time for everyone to be deregulated. Senator Goodover asked about the proposed amendments of MCI and Represenative Bradley stated she opposed all of these. Senator Gage wondered if a company could hook up a line in his private home and be regulated. Larry Huss, from Mountain Bell, stated the purpose of the language is for when service is offered to a third party, then it is considered a public network and this would then be regulated. A business phone in a private home would not be under regulations. An entity could have a private and a resale facility in one location.

Senator Gage wondered what the criteria would be for making the decision that it was time for an alternative. Rep. Bradley explained this would be under the rulemaking authority by the PSC.

Senator Fuller asked Mary Bulkley what a network was and was told it was the microwave, fibrotics, and any other combination they choose to set up a network.

Senator Fuller asked Joan Mandeville what the impact of a delay would be. She claimed people are building their own systems already and she feels that a very small number of customers are making up a large portion of the total revenues and if the companies such as MCI and SPRING take away the bulk of the large volume customers it would severely impact the costs to those customers remaining. Jim Payne expressed concern in this regard also.

Senator Goodover asked Larry Huss to respond. He noted that MCI's views on fairness are very different than what Mountain Bell feels is fair. He left a transcript of hearings before the public utilities in Colorado. (EXHIBIT 5) They do not care what the costs are to put in a system and there is no way to note from their records whether or not the rates they are charging are being used to subsidize another area's rates.

Senator Boylan wondered how many FTE's this might involve if this legislation were to pass in the PSC. Joan Mandeville stated they had not done a fiscal note but did not anticipate putting on any additional staff.

Senator Thayer wondered about skimming off the high volume customers and Woodside Wright's comment that their customers were mostly rural customers. He did not know how this percentage had been calculated. Senator Christiaens wanted an explanation of the need for a certificate of necessity. Joan Mandeville explained several states have these and they decided it was better for the customer to have competition in certain areas and we do not have this option. Jim Hughes noted that Mountain Bell would welcome competition however.

Mary Bulkley noted they only deal with long distance service. They have cheaper rates because they have a poorer quality line to access and therefore can charge cheaper rates.

Senator Weeding wondered if the cooperatives were seeking to develop long distance lines also and they stated they were not. They just want to be able to serve their customers more inexpensively. Senator Gage asked about forbearance and was told this only applies to rates. Rep. Bradley felt that Montana has been forced into competition and feels the amendments proposed by MCI would stifle competition. She feels we need to be fair to all parties involved. The hearing was closed on House Bills 380 and 577.

DISPOSITION OF HOUSE BILL 380: Senator Goodover MOVED THAT HOUSE Bill 380 BE CONCURRED IN. The motion carried. Senator Haffey will carry the bill on the Senate floor.

CONSIDERATION OF SENATE BILL 391: Senator Christiaens reported on progress of the subcommittee. He stated John LaFaver was going to put together some revenue figures for the committee. John Poston also has a "weekender" video machine available for review.

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 3/14/

SENATE SENT

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens	X		
Senator Boylan	X		
Senator Fuller	X		
Senator Gage	X		
Senator Goodover	X		
Senator Kolstad	X		
Senator Neuman	X		
Senator Thayer	X		
Senator Williams	X		
Senator Weeding	X		

Each day attach to minutes.

DATE

COMMITTEE ON Business & Industry March 14 1995

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
Linda Adams	AT+T	HB 577	✓	
James Paine	MT. Cons. Counsel	HB 852 HB 577	✓	
Bruce Strauhan	Western Tele-Communications	HB 577		
Joel ROBERTSON	MT PSC	HB 577	✓	
Pat Gannon	Mont Power	HB 852	✓	
Ed Jacobs	GTE Sprint	HB 577		✓
Carol Winkenwerder	MT. PSC	HB 852	✓	
Joe Mazurek	Mtn Bell	HB 577	X	
Mary Bucklew	MCI	HB 577		X
Lori Bass	MCI			
Russ Brown	NPRC	HB 852		
Jim Ands	Mt Dept of Ad.	HB 577		
Tary Dowdell	Mt Elec & Tel. Cooperatives	HB 577 380	✓ ✓	
John Scully	AT&T	577	✓	
Jan Johnson				
Evelyn Imlay				
Susan Chappell				

(Please leave prepared statement with Secretary)

EXHIBIT 1
BUSINESS & INDUST
March 14, 1985

NAME: JOAN MANDEVILLE DATE: 3/14/85

ADDRESS: 2701 PROSPECT AVE. HELENA, MT 59620

PHONE: 444-6181

REPRESENTING WHOM? MT PUBLIC SERVICE COMMISSION

APPEARING ON WHICH PROPOSAL: HB 577

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: PREPARED STATEMENT SUBMITTED

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

TESTIMONY OF THE MONTANA PUBLIC SERVICE COMMISSION
IN SUPPORT OF H.B. 577

The Montana Public Service Commission requested that H.B. 577 be introduced because the Commission believes that the point has been reached in the evolution of telecommunications in Montana where a rewrite of the telecommunications statutes is required if the people of Montana are to participate in the benefits of competition in the industry. Nonetheless, H.B. 577 should not be perceived as a "competition at any cost" bill. The bill recognizes a continued role to be played by the Commission and regulation as a transition is made toward a fully competitive industry.

As is stated in Section 2, the overriding purpose of the bill is to maintain the universal availability of basic telephone service at affordable rates. Only if it can exist without jeopardizing that purpose will the bill allow untariffed competition in the provision of basic telephone service.

One of the major functions of the bill is to redefine what it is that the Commission is to regulate. The bill provides a much narrower scope of regulation than is present in the current law. The current law regulates many services that would not continue to be regulated under H.B. 577. Examples of these services include: radio common carrier and paging services, cellular mobile services, customer owned coin telephones, hotel and motel services, telephone answering services, WATS resale, and private line services. The Commission believes that these types of services need not continue to be regulated for several reasons.

Many of these services came about long after the current law was originally enacted in 1913. Therefore it is questionable whether the legislature ever intended that they be regulated. These services are for the most part highly competitive. There are sufficient market forces present that regulatory oversight is not necessary to protect consumers. By ceasing to regulate these services the Commission can refocus its regulatory resources on the area of basic telephone service. Regulatory effort can be better spent on basic services because this is the area most vital to the needs of the people and the most likely to be provided on a monopoly basis.

A second function of the bill is to provide needed regulatory flexability. Competitive situations are arising even in the area of basic telephone service. H.B. 577 would allow the Commission to evaluate whether such competition is at a level sufficient that market forces will protect consumer interests in lieu of total rate regulation. If the Commission determines this to be the case in a particular market, the bill would authorize detariffing or the setting of permissable price ranges.

Under the bill the Commission would continue to exercise total rate regulation where a monopoly still exists in the provision of basic telephone service. The bill further provides that the Commission is responsible for assuring that telephone companies do not subsidize competitive activities with revenues from monopoly services.

In summary the Commission believes that H.B. 577 would allow a focusing of regulation in the area where it is really needed and will facilitate the withdrawal of regulatory oversight in favor of healthy competition where appropriate.

EXHIBIT 2
BUSINESS & INDUSTRY
March 14, 1985

HOUSE BILL NO. 577

THIRD READING COPY

1. Page 5, line 24

Preceding; "Compensatory"

Strike: "Fully"

EXHIBIT 3
BUSINESS & INDUST
March 14, 1985

NAME: Doddy Ewing GT DATE: 14 March 85

ADDRESS: Box 1242 VCa.

PHONE: 449 6077

REPRESENTING WHOM? GTE Sprint

APPEARING ON WHICH PROPOSAL: HB 577

DO YOU: SUPPORT?_____ AMEND?_____ OPPOSE? X

COMMENTS: Submitted

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

HB 577
TESTIMONY OF F. WOODSIDE WRIGHT
ON BEHALF OF GTE SPRINT
BEFORE THE MONTANA STATE LEGISLATURE
SENATE BUSINESS & INDUSTRY COMMITTEE
March 14, 1985

Good morning Mr. Chairman and members of the Committee. My name is F. Woodside Wright. I appear here today on behalf GTE SPRINT. Kurt Furst, the Regional Manager of State Legislative Affairs for GTE SPRINT was unable to be here this morning. I appreciate this opportunity to appear before the Committee to highlight for you some of SPRINT's views on a different, and we believe, better, method towards achieving an orderly transition to full and fair competition in the telecommunications industry.

SPRINT is a long distance telephone company which serves more than a million customers in homes and businesses nationwide. It has provided these services over the last 12 years. Sprint's services are available in over 360 metropolitan areas in the United States and SPRINT interstate calls may be made to any telephone in the country. The vast majority of Sprint customers are residential. To date, SPRINT has not sought authority to offer service in Montana.

In Sprint's opinion, HB 577 will recreate the monopoly in Montana without regulatory oversight. There is no competition in Montana's intrastate toll market today. Consequently, HB 577 authorizes deregulation of a monopoly into an area with no competition. The net effect of this bill will be prevention of Montana citizens from receiving competitive low cost long distance service.

HB 577 contains several positive features. The features as shown in provisions other than sections 7 & 8 are of no cause for concern to SPRINT. These other sections reflect the Public Service Commission need to clarify outmoded statutes. However, Sprint believes that sections 7 & 8 represent an overly broad and at this time unnecessary rush to deregulation.

With 3% of the market, Sprint is the third largest provider of long distance service in the nation. MCI is the second largest. These companies are not in Montana. This rush to deregulate the monopoly will destroy the development of competitive long distance telecommunications in this state.

It is reasonable that an interim study of sections 7 & 8 would be a better, more orderly approach to the deregulation in the wake of the AT&T divestiture. An interim study would allow the considered input of the legislature and the early input of long distance low cost competitors such as Sprint and MCI. To date the only forum for these companies to present their view points has been the House hearing on this bill.

Today--as a result of the AT&T breakup--there is more consideration of telecommunications issues by state legislatures than ever before in the history of this country. HB 577 is a dramatic change to current policy in Montana. The legislation was drafted and introduced without input of GTE Sprint. If the purpose is to prevent Sprint and other long distance carriers from coming to Montana and offering low cost service to citizens of Montana, then HB 577 is ready for action. If the purpose of this legislation is to encourage competition, the legislature should study in detail the impact of sections 7 & 8.

In conclusion, would you as a committee ask the proponents of this legislation to respond to the list of questions before you vote on HB 577.

Thank you for this opportunity to address you on this most important piece of telecommunications legislation.

Questions on HB 577

* Will passage of HB 577 keep local rates from rising?

* What specific individual or company in Montana has bypassed Mountain Bell or AT&T because they have received a competition offer for long distance services?

* Why isn't a study of sections 7 & 8 a reasonable step in deregulating portions of the telecommunications industry?

* How would Sprint, or another carrier appeal a decision to forbear from competition?

* Why have resellers been exempted from the legislation?

* Will rural areas pay the price when Mountain Bell or AT&T cuts costs to compete in urban areas?

* Would the Public Service Commission agree to delay implementation of sections 7 & 8 until there is a clear determination that there is effective competition in the Montana intrastate market?

MARCH 14, 1985
EXHIBIT 4
BUSINESS & INDUSTRY

MCI Telecommunications
Corporation
West Division
707 17th Street
Suite 4200
Denver, Colorado 80202
303 294 0005

MCI

Testimony of Mary Buckley for MCI on HB 577

Thank you Mr. Chairman for the opportunity to share our concerns with you regarding HB 577. I am Mary Buckley with the West Division of MCI Telecommunications Corporation. Before I begin my testimony, I would like to express my appreciation to Representative Bradley and the Public Service Commission for their dedicated effort towards adapting Montana's telecommunication law to the rapid changes taking place in this industry. These issues are very new to the states and are extremely complicated.

The direction toward a lessening of the regulatory burden is one that MCI supports wholeheartedly. While HB 577 suggests a recognition of need for new laws in light of the rapid changes taking place today in the telecommunications industry, we feel it stops short of encouraging true and effective competition.

Traditional regulation was intended to protect consumers from abuses of market power such as overcharging and price discrimination. MCI does not possess market power, so it does not have the potential to harm consumers.

Traditional regulation was based upon the assumption that telephone companies were monopolies with substantial market power including the ability to raise prices, substantially above costs in some or all markets without fear that new companies would enter the market and take customers away. Because competitive alternatives did not exist, consumers did not have a choice. They were captive of the monopoly. Consequently, regulation was turned to as a means of protecting these consumers.

Legislators feared that telephone companies might use their monopoly power to set prices substantially above the costs of providing the service. They also feared that these companies would engage in unfair price discrimination against certain customers and potential competitors, or even provide no service or poor quality service to certain customers in an arbitrary manner.

To guard against such possible abuses, traditional telephone regulation came to include regulation of the company's rate of return, specific rates and other tariff conditions, as well as control over entry and expansion of service, among many other items.

MCI and other companies similar to MCI have no monopoly offerings or other sources of market power. We, therefore, lack the market power that would permit us to engage in the kind of behavior that led to the adoption of regulation in the first place.

HB 577 attempts to regulate all services in the same manner. Regulations intended to protect consumers from the abuse of market power can only be successful if directed at the conditions of those firms that have market power. When th

alternatives and a firm lacks substantial market power, forces in the market itself will prevent the firm from being successful if it attempts to raise prices to earn monopoly-type profits or tries to engage in price discrimination. Thus, traditional regulation of companies like MCI is unnecessary because market forces alone will effectively restrain the firm's behavior.

Again, this bill looks only at service market areas, not companies. It is companies, not market areas, that have market power.

Further, monopoly companies may serve rotary dial customers, and the superior technical quality of their interconnections means that they are able to serve more customers on any route, and are better able to take advantage of any economies of scale that may exist more rapidly than a company such as MCI. This can work to keep companies like MCI out of some thin routes altogether until they have equal access. Thus, a monopoly company could use it's market power, if allowed to deaverage rates geographically, to overcharge customers on thin routes while charging lower prices on more dense routes.

MCI feels that the monopoly companies should be regulated as they have been until equal access is fully implemented and until all of the necessary provisions are made to prevent it from using its monopoly local exchange services to subsidize competitive toll services.

While HB 577 clearly attempts to address changes needed in Montana's telecommunications law, we feel it is too broad to prevent potential market power abuses and does not provide the Commission with clear guidance as to how the intended policy should be addressed. There are amendments, and explanations of these amendments, in front of you that we feel provide some of the necessary guidance to begin the transition to competition.

I am available for any questions you may have and thank you for the opportunity to speak to you today.

W.P 1-21-85 p 6

U S West Earnings Were $253 Million In Fourth Quarter

By a Wall Street Journal Staff Reporter

DENVER – U S West Inc. said it earned $253 million, or $2.62 a share, in the fourth quarter on revenue of $1.88 billion.

The company said profit was especially strong from the use of its local telephone lines by such long-distance carriers as American Telephone & Telegraph Co. and MCI Communications Corp.

Year-earlier comparisons weren't available because U S West didn't begin operating as an independent company until Jan. 1, 1984, when the break-up of AT&T became effective.

"It was an extremely strong quarter," said Brad Peery, chairman of Hicks Peery Inc., a San Francisco investment banking concern. Mr. Peery estimated that nonrecurring items accounted for about 12 cents a share of net income for the quarter. Chief among those items were a gain of about $5 million on goodwill and a credit of about $4 million from a research group formed by former Bell units, he said.

U S West also trimmed its work force in 1984 by 3,800 workers, to about 62,300, and cut maintenance costs more than expected by installing improved switching equipment, analysts said.

For the year, U S West had net income of $887 million, or $9.24 a share, on revenue of $7.3 billion.

NYT 1-19-85 p. 33

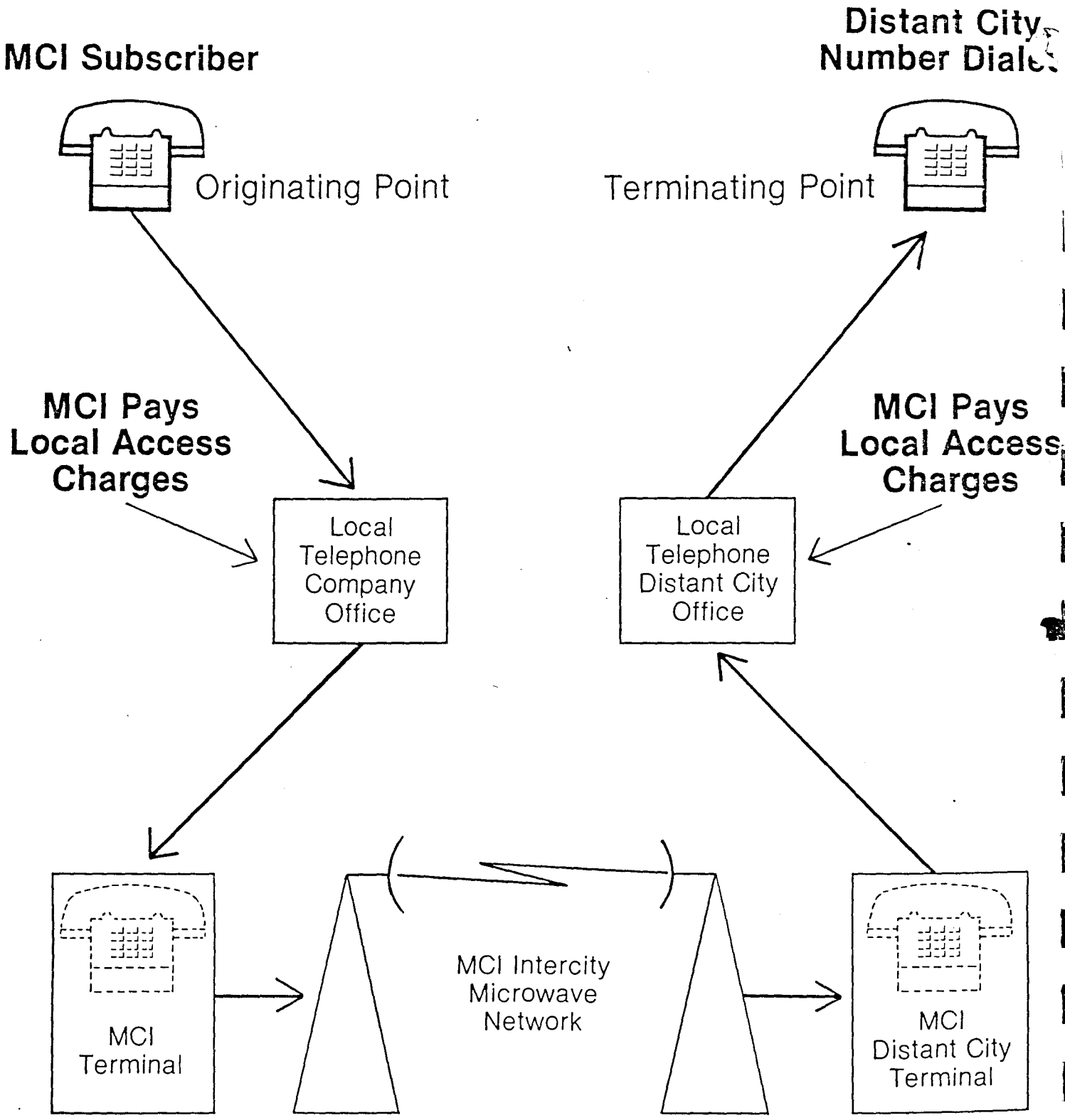
US West

US West Inc., the regional telephone company, yesterday reported fourth-quarter earnings of $253 million, or $2.62 a share, on sales of $1.9 billion.

Earnings of the company, which was created last January, have been increasing on a quarter-to-quarter basis. In the third quarter, US West earned $228 million, or $2.39 a share, on revenues of $1.86 billion.

Jack A. Macallister, the chief executive of US West, said the company continued to benefit from cost cutting. But he said 1984 revenues of $7.3 billion were below forecast because higher so-called access charges paid by long-distance companies to US West were instituted later than anticipated. The company's full-year earnings were $887 million, or $9.24 a share.

HOW MCI PROVIDES LONG DISTANCE SERVICE



MCI Capital Expense/Outlay

MCI Pays Revenues To State/Local Coffers

AMENDMENTS TO HB 577

1) Page 3, line 12
Following: "subject to regulation."
Insert: "(5) 'Telecommunications company' includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale or resale to the general public within this state."

2) Page 4, line 22
Following: "are"
Delete: "not regulated"
Insert: "competitive"

3) Page 4, Section 6, line 23
Following: "with services"
Delete: "not regulated"
Insert: "competitive"

4) Page 5, line 14
Following: "of this state."
Insert: "In determining such terms and conditions, the commission shall first determine whether such service is subject to effective competition. Effective competition means that customers of the service have reasonably available alternatives and the service is not provided to a captive customer base. In determining whether a service is competitive, factors the commission shall consider include but are not limited to:

(a) The number and size of alternative providers of service;

(b) The extent to which services are available from alternative providers in the relevant market;

(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions; and

(d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation

5) Page 5, line 14
Following: "of this state"
Delete: "The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in lieu thereof may:"
Insert new paragraph
" (3) When the commission finds that a telecommunications company has demonstrated that a telecommunications service is competitive, the commission may:"

6) Page 6, line 2
Delete: "(3)"
Insert: "(4)"

7) Page 6, line 3
Following: "services"
Insert: "that are similarly situated"

8) Page 7, lines 4 & 5
Following: "offer"
Delete: "but may not require information relating to the cost of providing such service"
Insert: "including the cost of providing such service to the customer."

9) Page 7, line 22
Following: "approved by the"
Delete: "commission."
Insert: "commission, provided that any costs incurred in fulfilling the terms of a competitive contract may not be recovered from the regulated rate base."

10) Page 8, line 8
Following: "the commission."
Insert new paragraph:
" (8) Revenues and expenses resulting from in the providing of services under this section shall not be attributed to or be subsidized by services that are competitive."

EXPLANATION OF AMENDMENTS TO HB 577

1) Amendment 1 is offered to provide a definition of a telecommunications company. This bill is completely service-oriented, with no clear indication that the PSC retains control or oversight any of the companies offering services. Because subsequent amendments reference telecommunications company, we felt it necessary to provide a definition for such references. We do not intend that resellers or rural co-operatives fall under this definition.

2) Amendments 2 and 3 provide a delineation between regulated and competitive services. Under the definition at paragraph 3 of Section 3, all services remain regulated under this bill. Thus, the cross-subsidization language is ineffective if it attempts to separate services which are regulated and services which are not regulated. Substituting "competitive" for "not regulated" clarifies the issue at which this entire section is directed. i.e. preventing cross-subsidization between fully regulated services such as local service and competitive services such as long distance.

3) Amendment 4 provides guidelines for the Commission to follow when deciding to detariff a service. The way the bill is currently written, the discretion is left entirely up to the commission, with no statutory trigger mechanisms, as to when and how Section 7 takes affected. If the purpose of the bill is to "further the policy of this state to encourage competition in the telecommunications industry", then the legislature should provide guidelines for that policy to ensure that the commission is able to fulfill this intent. The guidelines offered here are not restrictive in any way, and are structured to ensure that the consumers do have viable choices in the services being offerred.

4) Amendment 5 is a restructuring of the current language to provide a trigger mechanism for commission action, after the guidelines in Amendment 4 have been considered.

5) Amendment 6 provides a renumbering of the paragraphs in Section 7 to separate the standards or guidelines and the action following consideration of the standards.

6) Amendment 7 clarifies how regulations will be applied to the various companies offering services. It provides that monopoly companies will be regulated as all other monopoly companies and competitive companies will be regulated as all other competitive companies.

7) Amendment 8 ensures that the commission may gather information relating to the cost of the contract in question. Without such language, the cross-subsidization language in Section 6 is completely ineffective.

8) Amendments 9 and 10 provide additional language toward the prevention of cross-subsidization. This language prevents the underpricing of competitive contracts and subsequent cost recovery from fully regulated services.

GUNN / ROWE'S

EXHIBIT 4
BUSINESS & INDU
March 14, 198

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION OF GTE SPRINT COMMUNICATIONS CORPORATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OFFER INTERCITY TELECOMMUNICATIONS SERVICES TO THE PUBLIC IN THE STATE OF COLORADO AND FOR THE ESTABLISHMENT OF INITIAL RATES.	Application No. 36360
IN THE MATTER OF THE APPLICATION OF MCI TELECOMMUNICATIONS CORPORATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OFFER INTRASTATE TELECOMMUNICATIONS SERVICES TO THE PUBLIC IN THE STATE OF COLORADO.	Application No. 36337
IN THE MATTER OF THE APPLICATION OF MCI TELECOMMUNICATIONS CORPORATION FOR TEMPORARY AUTHORITY TO OFFER INTRASTATE TELECOMMUNICATIONS SERVICES TO THE PUBLIC IN THE STATE OF COLORADO.	Application No. 36338-TA
IN THE MATTER OF THE APPLICATION OF GTE SPRINT COMMUNICATIONS CORPORATION FOR TEMPORARY AUTHORITY TO OFFER INTERCITY INTERLATA TELECOMMUNICATIONS SERVICES TO THE PUBLIC IN THE STATE OF COLORADO.	Application No. 36448-TA
IN THE MATTER OF THE APPLICATION OF THE WESTERN UNION TELEGRAPH COMPANY FOR AUTHORITY TO PROVIDE INTEREXCHANGE SWITCHED VOICE TELECOMMUNICATIONS SERVICE ON AN INTERLATA BASIS IN THE STATE OF COLORADO.	Application No. 36456
IN THE MATTER OF THE APPLICATION OF THE WESTERN UNION TELEGRAPH COMPANY FOR TEMPORARY AUTHORITY TO PROVIDE INTEREXCHANGE SWITCHED VOICE TELECOMMUNICATIONS SERVICE ON AN INTERLATA BASIS IN THE STATE OF COLORADO.	Application No. 36491-TA

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC., Complainant, v. MCI TELECOMMUNICATIONS CORPORATION, GTE SPRINT COMMUNICATIONS CORPORATION and THE MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY, INC., et al. Respondents.	Case No. 6386

Pursuant to notice to all parties in interest, the above-entitled cause came on for hearing before Commissioners Edythe S. Miller and Ronald L. Lehr, in Hearing Room A, Local Tower, 1580 Logan Street, Denver, Colorado, on October 31, 1984, at 10:30 o'clock a.m.

APPEARANCES:

Michael McGloin, Esq.,
Denver, Colorado, and
Robert Peak, Esq.,
New York, New York,

for GTE Sprint Corporation;

Robert Nichols, Esq., and
Stanley Doten, Esq.,
Denver, Colorado,

for MCI Telecommunications Corporation;

Russel P. Rowe, Esq., and
David H. Stacy, Esq.,
Denver, Colorado,

for Mountain States Telephone and Telegraph Company;

APPEARANCES, Continued:

Jeffrey C. Pond, Esq.,
Denver, Colorado, and
Ken Gross, Esq.,
Washington, D.C.,

for Western Union Telegraph Company;

Larry Barnes, Esq., and
Gary Witt, Esq.,
Denver, Colorado,

for AT&T Communications;

Mark Davidson,
Assistant Attorney General,

for the Staff of the Public Utilities Commission;

John E. Archibold,
Assistant State Solicitor General,

for the Commission.

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	EXAM.
STEPHEN CHASE GUNN					
By Mr. Nichols	23				
By Mr. Barnes		25			
By Mr. Rowe		41			
By Mr. Davidson		78			
By Mr. Archibold		81			
By Chairwoman Miller					95
By Commissioner Lehr					97
By Mr. Barnes		99			
By Mr. Nichols			109		
By Mr. Rowe				115	
THOMAS F. QUINN					
By Mr. Nichols	118				
By Mr. Barnes		120			
By Mr. Rowe		130			
By Mr. Davidson		155			
By Mr. Archibold		156			
By Chairwoman Miller					162
By Commissioner Lehr					163
By Mr. Nichols			166		
KATHLEEN R. FLAHERTY					
By Mr. Nichols	169				
By Mr. Barnes		172			
By Mr. Rowe		189			

E X H I B I T S

NUMBER	MARKED	RECEIVED
MCI Gunn Testimony and MCI Gunn Exh. 1	23	25
MCI Gunn Ex. 2 and 3	72	118
MCI Quinn Testimony and MCI Quinn Ex. 1, 2 & 3	117	120
MCI Flaherty Testimony and MCI Flaherty Ex. 1 & 2		172

identified as MCI Stephen Chase Gunn testimony, a second exhibit, MCI Stephen Chase Gunn Exhibit 1, which is attached to his testimony with an affidavit on the first page.

(Whereupon, MCI Gunn testimony and MCI Gunn Exhibit 1 marked for identification.)

STEPHEN CHASE GUNN,

called for examination, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NICHOLS:

Q Mr. Gunn, will you state your name and business address for the record, please?

A Stephen Chase Gunn. It's G-u-n-n. 1133 Nineteenth Street Northwest, Washington, D.C. 20036.

Q Mr. Gunn, do you have before you a document entitled MCI Stephen Chase Gunn testimony, the document consisting of ten pages, and, additionally, a document entitled MCI Stephen Chase Gunn Exhibit No. 1, a document consisting of six pages? Do you have those documents in front of you?

A Yes, I do.

Q Do these documents constitute your testimony and exhibits in this proceeding today?

A Yes, they do.

Q Were these documents prepared by you or under your control and direction?

A Yes, they were.

Q If you were to answer the questions contained in the testimony today, would your answers be the same as they appear in that document?

A Yes, they would, except for one. There is one exception.

Q Would you like to indicate any corrections which you have, for the record?

A Yes, I would.

On the last question on page 5, the question reads, "What cities does MCI plan to offer intraLATA service in Colorado?"

I left out two cities.

Q Would you give those for the record, please, Mr. Gunn?

A Longmont and Loveland.

Q Longmont and Loveland should be inserted after Pueblo, is that correct?

A Yes, that's true.

Q Are there any other changes or corrections which you would like to make to your testimony?

A No, there is not.

MR. NICHOLS: Your Honor, I move the admission of this document into the record, subject to cross-examination by the parties.

we could collect sales tax or not.

Mr. Quinn might be able to answer this better.

If the sales tax is applicable, then we'll charge sales tax. It will show on the customer's bill.

Q MCI received a temporary authority from this Commission in August of this year. Are you aware of that?

A Yes, sir.

Q To do business in Colorado, is that correct?

A That is correct.

Q Have you had any rate changes since August of this year in the charges that you levy for your services?

A Within Colorado? No, we have not.

Q How about interstate?

A Interstate, yes, we have.

Q Don't you charge the same rate in Colorado?

A As our tariff, no, it does not.

Q Do you have different rates for interstate calls than you do for intrastate calls?

A Yes, we do.

Q And how did you determine in this case that the rates for your intrastate services? What procedures generally did you follow in doing that?

A Well, MCI sets its rates in the competitive marketplace. We look at our chief competitor, in this case AT&T, realizing that we have to compete with AT&T we set our

rates below AT&T's.

It is that simple.

Q Now, are your Colorado rates higher or lower than the interstate rates?

A I believe they are higher.

Q Does your billing system in billing the tariff charges that you have have the capacity of billing different interstate rates and intrastate rates?

A Yes, it does.

Q Could you from your billing system discern the interstate calls and charges that you had from the intrastate calls and charges?

A Yes, we could.

Q Could you from your billing system discern the intrastate interLATA calls from the intrastate intraLATA calls?

A Like I said before, we will bill for any call that originates on our network and terminates on our network.

Q That didn't respond to my question.

A The question of will we between any two city pairs, and will our billing reflect that, yes, it will.

Q Okay. Let's be clear on the record about this. Your billing system will reflect the calls that are made in Colorado over your network that are intrastate and interLATA and intraLATA in nature, is that correct?

A What our bill shows, and it's attached as an

exhibit to my testimony, if it's in the new customer booklet that we send out to our customers explaining the billing, it shows the city called, the phone number called, I believe the time of day, 3 p.m., whatever time the customer called, and the amount charged.

It does not show the true origination point of the call. We make an assumption that the customer who is located in Denver calls from Denver.

Q Then you don't know if it's a call on an intrastate basis whether it is intrastate or interstate, is that what you are saying?

A We have to make the assumption that a Denver customer is making that call. The call is billed from where the call enters our network.

If that Denver customer has taken his authorization and moved to Kansas City, called over, say, AT&T's network into our Denver switch, and then it goes from Denver to, say, Colorado Springs, we'll bill that call as if it were from Denver to Colorado Springs.

Q I understand that. Now, the interstate rates are lower than intrastate rates, and in your billing you bill whatever shows up on your system as originating into your network and terminating out of your network; is that correct?

A Yes, that is correct.

Q Regardless of whether it's an interstate call or intrastate call; is that correct?

A Yes, that's correct.

Q So, the customers in Colorado could be billed intrastate rates when, in fact, they should be paying interstate rates; is that correct?

A If a customer is actually calling from Denver and terminating that call in Silver Springs, then he's billed at inter -- excuse me -- intrastate rate.

Q Do you think it's reasonable to determine the proper tariff charge based upon the billing procedure and the methodology that you're following?

A Yes, I do.

Q Would it be reasonable to use for other purposes of dividing interstate and intrastate rates in matters?

A I don't quite understand the question.

Q Well, if it's reasonable to use this method for billing purposes interstate and intrastate, would it be reasonable to use it for discerning minutes of use for access and other things like that?

A I have never really examined that issue. I am sure there are separate issues for determining minutes.

Q In other words, it could be reasonable for billing and unreasonable for other matters?

A It may be.

Q Do you have any opinion as to dividing minutes of access use between interstate and intrastate relative to your billing?

A It's not my area of expertise. No, I do not have an opinion.

Q Would would that be?

A Miss Flaherty, Dr. Flaherty.

Q Okay. I've been told that MCI has one switch in the state of Colorado. Do you know if that's correct or incorrect?

A I believe that's correct.

Q Now, you're professing to serve eight cities in

I'll need to go over in that material, or I can address them by data number and put the exhibit together. I can do that. And we can perhaps cover that as appropriate.

CHAIRWOMAN MILLER: Will people have the necessary information if you do it by data number?

MR. ROWE: I think all the attorneys will. They have all had copies of those documents.

CHAIRWOMAN MILLER: Are we going to be able to follow your line of cross, Mr. Rowe?

MR. ROWE: Yes. And I'll minimize that until I absolutely have to.

MR. NICHOLS: May I clarify on how we're going to proceed on that?

MR. ROWE: Well, I have to leave it out at the moment.

MR. NICHOLS: Then we'll talk about it again when you have a proposal?

MR. ROWE: Yes, because I can't quickly put that stuff together.

CROSS-EXAMINATION

BY MR. ROWE:

Q Good morning, Mr. Gunn. How are you today?

A Fine.

Q Did you have occasion to review in connection with either the permanent or temporary authority application of

MCI Appendix H of the Commission's rules, part 4, for fixed utilities?

A I believe I did review those, yes, sir.

Q Has MCI presented or prepared or presented a feasibility study showing estimated investment income and expense in Colorado?

A Not to my knowledge.

Q All right. Does MCI currently keep Colorado specific records on any of those three categories, to your knowledge?

A Not to my knowledge.

Q All right. Does MCI presently keep Colorado specific cost?

A Once again I don't have any information.

Q All right. Now, did you have occasion to review the record -- or, the order entered by the Commission as modified later on the temporary authority application?

A I have reviewed quite a bit of information. If you happen to have a copy you could show me, I could definitely say yes or no.

Q Sure. The first one is dated August 21st, 1984. Did you have occasion to review that? Do you want to take a look at it?

A Yes, if I could just take a look at it.

Yes, I have read it.

Q Okay. Let me ask you just a few questions about that. First of all, because I am not sure this ever was finally answered on the record, your permanent application is limited to authority to carry interLATA telecommunications, is that correct?

A That is correct.

Q You are making no request to the Commission to extend that at the present time to intraLATA calls?

A Yes, we are not. That's right.

Q All right. Have you, or has somebody else on

Q And further, if the terminating location were, let's say, Ault, Colorado, instead of one of the cities where you have a point of presence, would it be the airline distance between the originating point of presence and the terminating number at Ault?

A Yes, it would.

Q That would apply to any call, whether it would be interLATA or intraLATA, isn't that basically true?

A As I said before, all calls that would occur on MCI's network would be billed at the appropriate rate.

Q Okay. Can you tell me what MCI's interstate revenues -- without stating what they are at the moment -- can you tell me what that figure is? I mean, do you have that knowledge?

A I could obtain that figure. I don't have it with me.

Q Well, it's in a data response which has been considered proprietary, and I am not going to state out loud what that figure is, but assuming there is some separated volume of intrastate call revenue from the various sources that you have, are you aware of any methodology that you use or have available to you to separate intraLATA from interLATA calls at the present time so that you could identify which of those revenues fall in either of those categories?

A I am not familiar with any existing mechanism.

Q Do you get any reports that separate that information out for you?

A For me, no.

Q From inside your company?

A No, I do not.

Q And that has been true up to the present time, is that right?

A Yes, it has been.

Q When did MCI first start doing business in Colorado? At least give me a rough date if you don't remember the exact date.

A It would have been -- I imagine it would have been when we turned up service in Denver, and I'm afraid I don't have that information with me.

Q Could you give me a year so we have a benchmark?

A I really don't know. It would be a complete guess on my part.

Q If we said 1981 and just used that as something for reference, from that point forward have there been any fundamental changes that you are aware of in MCI's procedures for carrying calls and billing for them?

A None that I am aware of, but that is not my area.

Q Okay. Have there been any changes that you are aware of since the modified final judgment was issued by Judge Greene?

A Once again none that I am aware of.

Q Okay. Is MCI T, that is Telecommunications, the applicant in this case?

A I believe so.

Q All right. Did it start doing business in Colorado on a date different than MCI itself did, or do you know that?

A I don't know that. I would assume it did.

Q Do you know whether MCI T, that is Telecommunications, is a Colorado corporation?

A I don't think so.

Q Okay.

A I don't know though.

Q Is anybody going to testify that has that information?

A Mr. Quinn may have that information.

Q Okay. I assume Mr. Quinn would be the proper person to talk about taxes, depreciation, accounting procedures, investments, returns, that type of matter, is that right?

A That is correct.

Q Okay. Do you know what MCI's return on investment in Colorado is, or is that something in Mr. Quinn's area as well?

A No, I don't.

Q How long did it take you to change the methodology by which you billed customers after there was a change in the rate level between the interstate and intrastate jurisdictions after July 31st?

A Well, there is -- it's really a two-part question.

Q Okay.

A There was -- the system had to be built to handle that. Now, the actual implementation of -- that system was built before we had our authority in the State of Colorado. The actual implementing of the new rate schedule that's in our tariff here was changed -- it took about three days. However, the computer system that made the -- that allowed for that, I think, took several months to develop.

Q Was MCI T doing business in Colorado on January 1st, 1984?

A I believe it was.

Q And it's been in business continually since that date?

A It has offered service.

Q Okay. Do you know where its books and records are located? Are they physically within the State of Colorado or are they someplace else?

A I believe they're in Washington, D.C.

Q Okay. Have you changed any of the services that

Q And by that I mean I think your only switch location is Denver; is that right?

A That is correct.

Q So, if the customer were in Greeley, it would have to go from his Greeley location to the point of presence in Greeley.

A I don't believe we offer originating MCI WATS service from Greeley. I think at this time it's only available from the Denver location.

Q Do you know how many of your customers have that connection?

A I don't have that information with me.

Q Okay. Your tariff permits completion or allows completion of calls from cities in one LATA to cities in the same LATA, does it not?

A Yes, that's correct.

Q You have not amended that since the temporary order hearing or temporary authority hearings; isn't that true?

A We have filed no amendments to our tariff.

Q How do you define long distance as you use that word on page three of your tariff testimony? Do you mean interLATA telecommunications service or do you mean something outside a single wire center base rate area?

MR. NICHOLS: Counsel, could you indicate what line we're talking about?

MR. ROWE: Yeah, this is on page three, and it's down -- it's the seventh line down in the MCI WATS question line.

THE WITNESS: Long distance, as it was used there, was a general term used to indicate it's not a local tel phone call.

Q Okay. But, then, it could be something that is intraLATA, as well; isn't that true?

A I suppose so.

Q And as configured, you can utilize MCI WATS to complete interLATA calls; isn't that true?

A MCI WATS will carry all calls.

Q Okay. Same thing applies to Dial -- is it Dial 1 service?

A Dial 1 service, yes, that's correct.

Q That same thing is true for it, is it not?

A Yes, it is.

Q No change has been made since the temporary authority on that, either; is that correct?

A No.

Q Is CCSA service offered in Colorado at the presen time?

A Let me check the tariff. I believe it's offered out of Denver only.

Q Okay. Does that permit the completion of an

intraLATA call, as well?

A It will allow all calls to be terminated over MCI's network.

Q Do you have Dedicated Lease Line service, as explained on page 4, in Colorado?

A That's our private line service. Let me check. I don't believe so, but let me confirm that.

Q All right. I was trying to find that tariff and I couldn't find it.

A Dedicated Lease Line service, it's currently available in Colorado.

Q Do you have any plans to offer that?

A As other terminal sites become available in Colorado, I imagine we'll turn it up.

Q Do you know whether the cost of installation activity for access lines which you use for MCI WATS are capitalized or expensed in Colorado?

A I don't know.

Q Do you know who would know that?

A Mr. Quinn may.

Q What is the fixed monthly charge for the dedicated access line for MCI WATS? Is that in the tariff?

A Yes, it is.

Q Would you point that out to me, please?

A That's on page 31, section C, 3.0412. It's toward

the bottom of the page.

Q Are those monthly charges?

A Yes, they are.

Q How long have those charges been assessed in Colorado, at least since 1/1 of '84?

A At least.

Q And before that, as long as MCI has been doing business in the state?

A For -- in conjunction with this MCI WATS type service. I don't know if it's always been a hundred dollars. There's been some sort of charge.

Q Okay. I'll accept that. And there has been a charge for that service, whether the rate level is the same now or not?

A That's correct.

Q Okay. Who installs those services; do you know?

A No, I don't.

Q Do you know whether it's Mountain Bell or -- I mean, do you know of your own knowledge that it's not Mountain Bell?

A I believe it is Mountain Bell.

Q Okay. It's also true, you say on page 7 that a customer located in Colorado who has selected Service Area One would be able to terminate their calls in Arizona, Kansas, Nebraska, New Mexico, Oklahoma, Utah, and Wyoming.

Isn't it also true that they can terminate their calls in Colorado as well?

A Yes, it is.

CHAIRWOMAN MILLER: And that's page 7 of the testimony?

MR. ROWE: Of the testimony, that's correct.

Q Do you know, as related on page 8, what the interest rates for escrow accounts area?

A It's whatever the savings account rate is.

Q Do you know what that is?

A I don't know what that is.

Q So, you don't also know whether it complies with the Commission policy in this state; would that be a fair conclusion?

A That would be fair.

Q If somebody in Grand Island, Nebraska, chooses to call Grand Junction, Colorado, with his MCI card, is that going to show up on his bill as an interLATA call or intraLATA call or interstate call?

A Assuming that we originate traffic from Grand Island, Nebraska, it would show up as an interstate call.

Q From whatever point of presence you had that it hit is where it would be billed from; is that right?

A In this case, it would be Grand Island, yes.

Q Okay. Has MCI performed any studies or done any

were discussing the importance of having the same set of terms and conditions for interstate and intrastate. That's been abandoned to a certain extent since you now have different rate levels; isn't that true?

A No, not necessarily. What we're talking about there is treatment of the customer.

Q Well, do you have any demonstrated harm to MCI that you can give to this Commission from having different rate levels interstate, intrastate, today?

A Rate levels?

Q Yeah.

A No, not rate levels, no.

Q You also say -- and this is about, oh, ten, twelve lines into that text on page nine, words of speaker, "Since customers' acceptance and sound business practice dictate using identical terms and conditions," words of the speaker unquote, that's the introductory clause, dependent clause. Do you have any studies to support that, or is that simply your observation?

A It's our observation.

Q Is it your observation, since it's your testimony?

A It's what I believe to be common sense.

Q Okay. To your knowledge, the same network is used ubiquitously to provide all the services you have; is that correct?

A Yes.

Q And is part of your proposal, I take it, you would not propose to offer cross-support for any of the rate levels or services that you offer; is that correct?

A That is correct.

Q The Order of August 21, 1984 -- also, I believe, if I can find it -- addressed notification of customers, or maybe that's a subsequent order. Let me take a minute here.

Paragraph 7 of the Order which we reviewed a portion of before indicates that MCI T shall mail to all existing and inquiring customers located in the State of Colorado information describing LATA boundaries as well as information indicating that each carrier's respective network is only to be used for interLATA communications.

What steps has MCI taken to comply with that portion of the Order?

CROSS-EXAMINATION

BY MR. DAVIDSON:

Q Mr. Gunn, in case you have forgotten the introductions, my name is Mark Davidson, and I represent the staff of the Commission in this proceeding.

At page 6 of your testimony, your prepared testimony, you refer to the fact that the Colorado intrastate interLATA rates would be specifically designed for this market. Are you with me there?

A Yes, I am.

Q Okay. What are the distinguishing features of those rates as they would relate to the interLATA market in Colorado?

A Well, they are competitive in all cases with those of AT&T.

Q So AT&T is your benchmark in all cases?

A Yes, it is.

Q You told, I believe, it was Mr. Barnes that one -- or that Colorado rates are different from your current interstate rates, is that correct?

A Yes, it is correct.

Q And that the Colorado rates are higher in some respects?

A In most cases, I believe they are.

Q Is that on the mileage basis that you have

discussed earlier? In other words, per mile they are higher or just in general?

A Per mile they are higher. That is not true in all cases. There are some cases where the interstate rate is lower than -- excuse me -- higher than the intrastate rate.

Q Is there any basis that you can use to describe which are higher and which are lower, referring to the Colorado inter -- or intrastate rates?

A We would prepare a side-by-side comparison. It is not done yet.

Q You have not compared or made that comparison?

A No. I have done something on a piece of paper here that I would hardly wish to commit to it right now.

Q You also told us earlier that you had read the -- you were familiar in some respects with the Colorado Rules of Practice and Procedure as this Commission applies them regarding the notice period for the changing of tariffs. Do you remember that discussion you had with Mr. Barnes?

A Yes.

Q Are you also familiar with the Colorado statutes that require a 30-day notice period for the change in tariff?

A I believe I remember reading that, yes.

Q So your request for waiver, if you will, by th Commission of its 30-day notice period does not address the that Colorado statutory law also requires that notice provis

Atty Gen's Office
Cross-examining
MCI Witness Gunn
80

doesn't it?

A I believe that is correct.

Q How do you presently notify customers when you are changing a tariff?

A We notify our customers either through a separate mailing or something is sent to each customer, or we notify them in what would be considered a stuffer. It is included with their bill. In each case the customer is notified at a minimum of 14 days in advance of any changes.

Q You bill on a monthly basis?

A Yes, we do.

Q If you would assume with me, Mr. Gunn, that the carriers, other than AT&T, all charge essentially what you have referred to as competitive rates, on what basis, if any, can the Colorado Commission determine whether those rates are justifiable in Colorado? In other words, from an expense standpoint as you discussed with Mr. Barnes earlier whether those rates would cover those expenses, for instance.

A I don't know if it is really necessary for the State of Colorado to review those rates. Those rates are set in the competitive marketplace. You do review the rates of AT&T, and if those rates -- since the rates of the competitive carriers are less than AT&T's, I see no need to review those rates.

Q Well, is there any way that the Colorado

Commission can determine whether the rates in Colorado are being used to support rates in another state, for instance?

A I know of no methodology to do that.

Q Based upon the fact that you don't intend to file the justification for those rates?

A Exactly.

MR. DAVIDSON: Those are all the questions I have. Thank you.

CHAIRWOMAN MILLER: Thank you, Mr. Davidson.

Mr. Archibold.

CROSS-EXAMINATION

BY MR. ARCHIBOLD:

Q Mr. Gunn, I take it that you are familiar with the August 21st order which grants MCI and Sprint temporary authority?

A Yes, sir, I am.

Q And I was looking or reviewing paragraph two which says, "MCI Telecommunications Corporation granted temporary authority to operate as a common carrier for the provision of intrastate interLATA telecommunications services," and then it has another sentence about expiration of that authority on February 21, 1985.

Is it also true that you would be familiar with the type of authority you have been granted in these other 23 states so far?

charging intraLATA traffic out of those offices or to those office has it?

A Well, we think that we're doing quite a bit in developing information to give our customers. It specifically says they're not allowed to make these kinds of calls.

Q Do you have any response from your customers or have you undertaken any investigation to determine what impact that will have on customer calling patterns?

A No, I don't have any information like that.

Q So, you don't know whether they'll be decreased, increased, or stay the same in percentage of --

A No, I don't.

Q -- intraLATA usage?

A No, I don't know.

Q Do you have any knowledge at all of access charges?

A Very limited.

Q Let me ask you this. Do you perceive that your network -- say it's in place in Colorado in some fashion -- could be sampled or configured so that it would give you some approximate split of traffic between an interstate and intrastate jurisdiction?

A Well, I think that the method that we're using consistent with the access tariffs that went into effect in May is a method that seems to be agreed upon to split interstate and intrastate, if you will.

Q Are you talking about the FCC interstate access tariff?

A Yes.

Q And you have, in fact, split traffic on that basis?

A I'm not absolutely certain whether or not we've done the first report on that, but it certainly is our intent to do so, according to the procedures that are outlined in that tariff.

Q Okay. Let me ask you about a specific data request that's in the document.

A Do you have a magnifying glass?

Q No. Unfortunately, that's the way I got it from you so I can't really help you much on that.

MR. NICHOLS: Counsel, do we have the question?

MR. ROWE: The question, no, but we can get the question. I'm not sure we need the question to address this.

Q If you look at the bottom of Attachment 75B, isn't that your report basically splitting usage between the state and federal jurisdiction by number of calls, duration of calls, by your various tiers?

A That's what it looks like. Looks like an examination of the May billing.

Q Okay. You run these reports once a month, do you not?

I would like to come back to it. Do you have responsibility for any of the other data requests that appear in Exhibit 2, that is MCI-Gunn-2, which is this package of stuff that I gave you?

A To my knowledge, I wasn't involved in preparing this. If there was specific items in here that you think that I might have responsibility for, if you could call them out perhaps we could go faster.

Q Okay. That is a reasonable request. Attachment 75C purports to be some sort of a tax return I think for property tax purposes for your property in Colorado. Do you know whether it is complete?

A I have no idea.

Q Okay. Did you have any involvement in preparing any cost studies that were Colorado specific on or after 1/1/84?

A No, I did not.

Q Did you have any responsibility to prepare a feasibility study for submission to this Commission that relates to investment expenses, or revenues to be derived from the Colorado intrastate market?

A No, I did not.

Q Have you ever on your own attempted to, or in fact segregated and separated the investments jurisdictionally between interstate and intrastate Colorado for MCI?

A No, I have not.

RATT

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION OF GTE SPRINT COMMUNICATIONS CORPORATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OFFER INTERCITY TELECOMMUNICATIONS SERVICES TO THE PUBLIC IN THE STATE OF COLORADO AND FOR THE ESTABLISHMENT OF INITIAL RATES.	Application No. 36360
IN THE MATTER OF THE APPLICATION OF MCI TELECOMMUNICATIONS CORPORATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OFFER INTRASTATE TELECOMMUNICATIONS SERVICES TO THE PUBLIC IN THE STATE OF COLORADO.	Application No. 36337
IN THE MATTER OF THE APPLICATION OF MCI TELECOMMUNICATIONS CORPORATION FOR TEMPORARY AUTHORITY TO OFFER INTRASTATE TELECOMMUNICATIONS SERVICES TO THE PUBLIC IN THE STATE OF COLORADO.	Application No. 36338-TA
IN THE MATTER OF THE APPLICATION OF GTE SPRINT COMMUNICATIONS CORPORATION FOR TEMPORARY AUTHORITY TO OFFER INTERCITY INTERLATA TELECOMMUNICATIONS SERVICES TO THE PUBLIC IN THE STATE OF COLORADO.	Application No. 36448-TA
IN THE MATTER OF THE APPLICATION OF THE WESTERN UNION TELEGRAPH COMPANY FOR AUTHORITY TO PROVIDE INTEREXCHANGE SWITCHED VOICE TELECOMMUNICATIONS SERVICE ON AN INTERLATA BASIS IN THE STATE OF COLORADO.	Application No. 36456
IN THE MATTER OF THE APPLICATION OF THE WESTERN UNION TELEGRAPH COMPANY FOR TEMPORARY AUTHORITY TO PROVIDE INTEREXCHANGE SWITCHED VOICE TELECOMMUNICATIONS SERVICE ON AN INTERLATA BASIS IN THE STATE OF COLORADO.	Application No. 36491-TA

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC., Complainant, v. MCI TELECOMMUNICATIONS CORPORATION, GTE SPRINT COMMUNICATIONS CORPORATION and THE MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY, INC., et al. Respondents.	Case No. 6386

Denver, Colorado

November 1, 1984

10:00 o'clock a.m.

Met pursuant to recess.

Before COMMISSIONERS:

Edythe S. Miller
Ronald L. Lehr

APPEARANCES:

(As previously noted.)

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	EXAM.
KATHLEEN FLAHERTY					
By Mr. Davidson		29			
By Mr. Archibold		34			
By Chairwoman Miller					45
By Commissioner Lehr					47
CAROLYN J. RATTI					
By Mr. Peak	65				
By Mr. Barnes		66			
By Mr. Stacy		84			
By Chairwoman Miller					95
By Mr. Davidson		104			
By Mr. Archibold		122			
JAMES B. BOYD					
By Mr. Peak	130				
By Mr. Barnes		132			
By Mr. Stacy		138			
By Mr. Davidson		158			
By Mr. Archibold		162			
By Chairwoman Miller					172
By Commissioner Lehr					179
By Mr. Barnes		182			
G. JAY NELSON					
By Mr. Peak	187				
By Mr. Pond		190			
By Mr. Barnes		193			
By Mr. Stacy		214			
By Mr. Davidson		231			
By Mr. Archibold		237			
By Chairwoman Miller					244
By Commissioner Lehr					247

E X H I B I T S

NUMBER	MARKED	RECEIVED
GTE-S Ratti Test.& No. 1		66
GTE-S Boyd Test.	130	131
GTE-S Boyd No. 1	176	178
GTE-S Nelson Test.& No. 1	187	188

very quickly and succinctly, what is your Sprint service?

A It is a service similar to AT&T's MTS service.

Q And that means that each customer that subscribes to this service will be charged five dollars a month even if they don't use that much long distance, is that correct?

A Yes, that is correct. There is a five dollar minimum monthly usage requirement.

Q Now, can you tell me why you have that requirement?

A No, I'm sorry. I didn't remember that you had asked that of me. I was not involved with that decision.

Q Now, that is part of the tariffs, right?

A Yes, it is.

Q And you are here to testify about the tariffs, is that correct?

A Yes.

Q Okay. Now, with regard to charging for intraLATA calls, if they are completed over GTE's network, what charge would be made according to your tariffs for the intraLATA calls in Colorado that are completed over the GTE network if they are completed over that network?

A Well, we would charge the customer the rate for the appropriate mileage band.

Q And where would you get this rate?

A Well, it's in both the intrastate and the interstate tariff. The rate is the same.

Q So, you would charge the customer for the intrastate intraLATA call the interstate rate which is the same as the intrastate interLATA rate, is that correct?

A Yes.

Q Now, your tariffs do not state this, do they, that you will make this type of charge?

A They state what the charges are for the appropriate mileage band.

Q Do they state that a charge will be made for intraLATA calls anywhere?

A The tariffs don't address that issue. The tariffs say that we are authorized to offer interLATA service.

Q I would assume that neither the interstate nor the intrastate have any provision in them that would state that charges will be made at certain rates for intrastate intraLATA calls, am I correct?

A They do not state that, no.

Q In your capacity as a tariff expert, do you know anything about the access charges that are associated with the services that are provided in hour tariffs?

A I am not an access charge expert, no. I know generally. I am generally familiar with access charges.

Q I don't want to prolong the hearing, but I guess I need to know from you should I address access charge questions to you or someone else that will follow you?

A Well, in our application, we're requesting 14 days' notice. We would like the changes to go into effect on 14 days' notice.

We filed this tariff, I believe, on October 5th. The 14 days has passed since then. We would like it to go into effect as soon as possible.

Q Has it already gone into effect?

A No. It has not been approved.

Q Now, do you have one billing system for interstate and intrastate rates?

A Yes, we do.

Q Have you made this change on an interstate basis

A I don't believe we've made it yet.

Q Does that mean you know or do you know that you haven't made it yet or you don't know?

A What's the date today.

Q It's the First of November.

A Okay. The changes were scheduled to go into effect November 1st --

Q So --

A -- at the interstate level.

Q So, the interstate rate goes into effect today is that correct?

A That's true.

Q Now, what happens to the state rate?

A I'm not absolutely sure.

Q Well, you have in your testimony the fact that your tariff is on inter. Intrastate basis and interstate basis are identical; is that correct?

A Yes, that's correct.

Q Can you bill separately for different intrastate rates and interstate rates in the state of Colorado at this moment?

A My understanding is that we do not have that capability at this time.

Q Therefore, doesn't that mean if you put this in effect on an interstate basis it also went into effect today in the state of Colorado; is that correct?

A That may be correct. I'm not sure.

Q Are there any other changes that would have --

A Could I just clarify one thing?

Q Sure.

A I think that the changes that are going into effect on November 1, I don't believe there are any changes to the Sprint rates. I think that the changes that are going into effect are -- have to do with the structure of our WATS type service.

Q Could we conclude, since you have only one billing system at the moment, that any changes made in the interstate rate on a 14-day notice basis would automatically

AT&T Cross-examining GTE's Panel

this Commission to do relative to approving your tariffs now and in the future?

A Well, what we would like would be to receive from this Commission the treatment that we have received fro the FCC, and that is that our tariffs be presumed valid, tha they -- tariff changes be allowed to become effective on 14 days' notice, that we not be required to file cost support data or conform to the USOA and that we be allowed to use th same billing and customer service procedures that we use at the interstate level.

Q Now, one last question or line of questioning How do you set your rates that you have in your intrastate tariffs in Colorado?

A Well, the rates that we have in -- that we're proposing for Colorado now are the same as the rates that we using on an interstate level. We're using the same rates nationwide.

Q And how were the rates on an interstate level established?

A They were established by our marketing depart ment after an analysis of the market.

Q Would it be safe to say that the benchmark -- I believe that's been used before -- was the AT&T rate and that the GTE rates were then set under that?

A I think that's a fair characterization.

Q And, therefore, the rates in the state of Colorado that you're proposing are interstate rates of GTE that have been set just below the interstate rates of AT&T.

A I believe that's true.

Q Without relevant -- without concern or reviewing any costs associated with that; is that correct?

A That's true.

MR. BARNES: No further questions.

CHAIRWOMAN MILLER: Thank you, Mr. Barnes. Mr. Rowe.

MR. ROWE: Mr. Stacy will --

CHAIRWOMAN MILLER: Mr. Stacy.

MR. ROWE: At least, I hope he is. Otherwise, my cross will be substantially shorter than half an hour.

THE WITNESS: Be fine with me.

CHAIRWOMAN MILLER: You have until ten of one, Mr. Stacy.

MR. STACY: Thank you.

CROSS-EXAMINATION

BY MR. STACY:

Q Ms. Ratti, am I pronouncing that right?

A Yes.

Q Ratti. You are a regulatory analyst; is that right?

A Yes, I am.

Mountain Bell Cross-exam. of GTE's Rattle 92

ask when you expect that service to be on line?

A I don't know that we have firm plans. I think that it depends -- it may depend on the type of regulations to which we are subjected in the state. It may depend on the market, our facilities, our capacity, the demand.

Q The next page in your testimony you speak in terms of rates that your company charges on an intrastate basis as being the same as they are on an interstate basis. Do you see that reference?

A On page 8?

Q Correct. At the top.

A Yes.

Q Are GTE Sprint's costs for intrastate and interstate service the same?

A I don't know. We have never broken down our costs on a state by state basis.

Q As with MCI then, should we assume that you price your services based on marketing factors as opposed to cost?

A I think you could characterize it that way, but I would add that our services, we must cover our costs somehow or I doubt that we would still be in business.

Q Other than the fact that you are still in business, how do you know that you cover your costs?

A I am not the financial witness. Maybe you could

ask him about that.

Q Okay. Do you consider access charges that GTE Sprint pays around the country, and with respect to its Colorado business, as constituting a cost of providing a particular service?

A Certainly that is a big cost to us.

Q Are you aware that the intrastate and interstate access charges are not identical with respect to Colorado operations?

A That is my understanding.

Q Do you feel that that cost -- or perhaps this is an appropriate question for your financial person but I will ask it anyway -- do you feel that the difference in cost in the access charges would be a factor that would normally go into the equation of determining what rates GTE Sprint will be charging for a particular service?

A I don't know that it's a factor that would normally go into the equation. We don't break down our cost and price our services accordingly.

Q Okay. You also make reference to the term "market power" several times in your prefiled testimony. Can you tell us, please, what you mean by that term?

A I think that I would defer that question to Nina Cornell. She is the policy expert in this proceeding.

Q I think that is fine, but this is your testimony

consider whether or not we could enter the market.

Q Well, you've testified that your prices or you rates are not based on your costs, correct?

A Yes.

Q Therefore, this cost, as with any other compan presumably would not be a factor in setting your rates; is that a fair statement?

A It's not a -- I'm sure that it's a factor. There is not a direct correlation, but if our costs were to rise at a larger rate, I'm -- you know, I'm sure that there would be a -- we would have to make a decision on whether or not we could comply.

Q How would you make that decision, inasmuch as you have testified that GTE Sprint does not account for its costs on a state-specific basis?

A I'm sorry. I don't understand the question.

Q I'm wondering how you could even perform that analysis for Colorado if the Commission were to order rate base regulation, inasmuch as you have testified that you don' have state specific cost data.

A That's true, we don't, but if we were required to assign personnel for a project specific to this state, the we would impose costs for that project. Incur costs. I'm sorry.

Q All right. In addition to adding personnel,

you would have to presumably make whatever alterations were necessary to utilize the uniform system of accounts; is that correct?

A That's correct.

Q That's one of the costs that you're talking about.

A Certainly.

Q And is it not your contention, as you set forth in 19 through 22, the bottom of the page, that those costs would be incurred for no useful purpose?

A Yes, that's our position.

Q In what sense do you use the term "useful purpose," or "no useful purpose"?

A Well, I think it's clear. We don't see any benefit to be derived from forcing us to comply with the uniform system of accounts.

Q And no benefit to the citizens or the rate payers of the state?

A That's right.

Q Page 13, you discuss off-peak hour discounts; do you recall that?

A Yes.

Q Isn't it true -- let me put it this way. Is it true that GTE Sprint proposes to offer different discounts to different customers?

A No, I don't know.

CHAIRWOMAN MILLER: You have four minutes, Mr. Stacy.

Q (By Mr. Stacy) Thank you. On page 16, I believe you make reference to -- in the lines 15 or 16 through 21 · to the bill that your customers receive.

A Yes.

Q The last item mentioned refers to the provision of a grouping of calls made between city pairs; is that right?

A Yes.

Q Inasmuch as you can provide the grouping of calls between city pairs, what is there to prevent GTE Sprint from providing calls broken down by intraLATA versus interLATA?

A Well, the city pairs that are shown on the bill only represent the point of entry into our network and the termination point of the call. We don't know the true origination point of each call.

Q Is that the only reason that you cannot provide on your bill a segregation of the intraLATA calls?

A Well, I don't -- our billing system is not equipped to do that.

Q What would be required for it to become equipped to do it? One program, right?

A Well, I think first you would have to figure

out how we're going to define intraLATA calls. If we don't know the origination of a call, then we don't know whether or not a call is, in fact, intraLATA.

Q You would agree, wouldn't you, that the system could be modified so as to reflect the intraLATA calls?

A No.

Q Okay.

A Not if we don't know whether or not the calls are intraLATA.

Q Are you familiar with the phrase call detail tape?

A Yes.

Q Can you briefly explain what that is?

A What that is is a magnetic tape that we provide to those customers who subscribe to that service that gives them a detail of their calls, that the information that is on the call detail tape is the same information that is contained on the detail page of their bill. They just receive it in the magnetic tape form.

Q And what is the magnetic tape detail service; is that the same thing?

A Yes.

Q Now, GTE Sprint was authorized to do business in Colorado on or about November 21, 1983; does that sound right to you?

have an opinion that is admissible into evidence on that unless she is a lawyer.

CHAIRWOMAN MILLER: Do you feel you have an opinion on that, Ms. Ratti?

A I don't feel that I can formulate an opinion without having read the statutes.

Q (By Mr. Davidson) I will accept that. That is fine. You have told us earlier that Sprint does not give much weight to its cost in determining its rates, that it is a competitive based structure, is that right?

A I don't know that I said that we don't give much weight to that. There is not a direct correlation.

Q Is there an indirect correlation?

A Well, I think you are beyond the scope of my expertise. The rates are set by the market department, and I believe that they are set largely in response to the market price.

Q Okay. Assuming that that is the case, how is the Colorado Commission going to determine whether Sprint's rates in Colorado may not be used to support rates in another state where you are operating?

A Well, I think that is a question that Dr. Cornell is better prepared to answer than I. I think that if our rates are competitive, then it follows that they must be fair and reasonable.

Q Well, I am not really asking whether they are fair and reasonable. I am asking if here in Colorado the rates that you establish are perhaps -- or how can we tell whether or not they are being used to support rates, lower rates in another state?

A Again, I think that is a question better put to Dr. Cornell.

Q Well, just so that I don't miss my chance with Dr. Cornell, is she a member of your marketing department and will be able to address that on a Sprint-specific basis?

A No, she is not a member of our marketing department. She addresses that on a general policy basis.

Q Is she making the policy for Sprint in this area that I am interested in?

A No, she doesn't make the policy for Sprint.

Q Okay. Will there be anybody from Sprint that could possibly address that from your marketing department, for instance, that will testify here?

A We had no plans to put on a witness who determines the rates, no.

MR. PEAK: Mr. Davidson, maybe I can clarify for you.

MR. DAVIDSON: Okay.

MR. PEAK: Dr. Cornell will testify and answer questions on that subject from the point of view of her economic

me there?

A Yes.

Q Are you familiar with this Commission's rules regarding the termination of service?

A No, I am not personally familiar.

Q Do you know whether or not Sprint intends to comply with those rules if this application is granted?

A No. I think it is very possible that we already do comply. I understand that our rules are quite lenient in that regard.

Q So Sprint in your opinion would intend to comply with this Commission's rules regarding termination?

A Well, Spring is asking that we be permitted to implement the same billing and customer service regulations that we use at the interstate level, because our customers use an integrated service and we don't really know how we could apply two different sets of regulations to the same customers.

Q Well, let's just suppose for a minute that this Commission rejects that proposal, but grants you your authority.

Has Sprint done any investigation or conducted any study to determine its ability to comply with this Commission's rules regardless of what we are talking about as they differ from FCC rules?

A I have not personally conducted such a study. I don't know to what extent the legal department has reviewed

Q Okay. You had a discussion with Mr. Barnes about the effective date of your recent tariff change. Remember that line of discussion? How often does Sprint or has Sprint, let's say, within the last 12 months changed its rates?

A I believe that we had -- we had a major change on January 1st of this year. I think that we made some minor changes in March, sometime in the spring, and I believe we made a change in September. I think those were also fairly minor changes.

Q Were those changes to your interstate rates only?

A They were changes to our interstate rates, yes, and to intrastate rates where we had intrastate tariffs.

Q Okay. That's my next question, I guess. If the intraLATA rates in Colorado have not changed effective today --

A Uh-huh.

Q -- as I indicated, they had not been improved yet. There are other states in a similar situation wherein rate changes may not go into effect at the same time as your interstate tariff filings will go into effect.

A I'm not really sure about that. I think that -- I think that we've run into a couple of problems that we've been able to work out with the various commissions.

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 21, 1985

The forty-third meeting of the Business & Industry Committee met on March 21, 1985 in Room 410 of the Capitol Building at 10 a.m. The meeting was called to order by Chairman Mike Halligan.

ROLL CALL: The members of the committee were all present except for Senator Neuman who was excused.

CONSIDERATION OF HOUSE BILL 567: Representative James Schultz, House District #30, Lewistown, is the chief sponsor of this measure which would require life and disability insurance companies to send written cancellation notices before cancelling a policy for nonpayment of premiums. He had talked with several constituents and felt this was a problem that needed to be addressed. He noted this is patterned after model legislation passed in 16 states. (EXHIBIT 1)

PROPONENTS: There were none.

OPPONENTS: There were none.

Questions were then called for. Senator Halligan wondered just which policies this measure would cover and was told by Rep. Schultz policies that were primarily annual premiums. He felt it would affect 10 to 25% of the total policies that are currently issued. He was concerned about the 6 month hospital insurance policies but felt that they could not be addressed in this act.

Senator Thayer wondered if there was a way of giving notice on policies that are paid on a monthly basis. He felt the bill should stipulate that in no event can any policy be cancelled without some notification. Rep. Schultz stated he would support any efforts to check into this situation further. He then closed the hearing on House Bill 567.

CONSIDERATION OF HOUSE BILL 606: Representative Bud Campbell, House District #48, Deer Lodge, is the chief sponsor of this measure which he noted was done upon the request of the Department of Justice, Motor Vehicle Division. It would revise and clarify the laws pertaining to the sale and distribution of motor vehicles, establish administrative penalties and amend some sections of the current law. He explained that current law requires a motor vehicle dealer to have a sign indicating the firm name and headquarters at the principal place of business. However this can be confusing when the dealer has a completely different type of business at that location such as a motel or a restaurant. He felt it was reasonable to have a sign to indicate that a dealer has autos for sale. He indicated too that the bill would clearly authorize the divison to check dealer records to insure compliance with the law.

PROPONENTS: Larry Majerus, Administrator of the Motor Vehicle

DISPOSITION OF HOUSE BILL 577: Proposed amendments to House Bill 577 were turned in by Larry Huss of Mountain Bell along with a handout showing how the amendments would appear in the bill if adopted. (EXHIBIT 4) He noted the amendments proposed had been worked out between all the parties involved and were now acceptable. He then explained the amendments in more detail.

Woodson Wright, representing SPRINT, stated they had participated in the discussions but were not in total agreement with the proposed amendments. They are still concerned about the word "switched" on page 2, line 24 of the bill. They would like this removed. He also added that SPRINT has 1.5 million customers and of these 1.1 million are residential.

Danny Oberg, from the PSC, was also asked to comment. He felt the amendments being proposed were acceptable because they allow for flexibility.

Calvin Suskind, Attorney for the PSC, stated this bill identifies basic telephone services and those services that do not need to be regulated such as mobile phones, answering services, etc. and that this treatment is the same for nonswitch dedicated lines. He feels this is a very competitive area and should remain so.

Jim Payne, Mountain Bell, feels the amendments do not alter their support of the bill. MCI was also in support of the bill and the amendments.

Larry Huss explained the only reason the cable tv people were not concerned is because the word switched is in the bill.

Senator Goodover then MOVED TO PASS THE AMENDMENTS PROPOSED FOR HOUSE BILL 577. (EXHIBIT 4) Danny Oberg explained they are trying to avoid the monopoly situation regarding dedicated lines because this is a very competitive area. He felt that the thrust of the telecommunications area is to have competition and to retain their authority in some areas would only thwart the efforts that have been made thus far and would be very difficult to regulate. The motion TO ADOPT THE AMENDMENTS PROPOSED carried.

Senator Goodover then MOVED THAT HOUSE BILL 577 BE CONCURRED IN AS AMENDED. Senator Boylan felt this bill was very complex. Jim Payne felt if nothing was passed that Mountain Bell would put at a great disadvantage and there would be competitors coming in and offering lower rates and taking away the high volume customers. He could perceive some real problems and litigation disputes. Senator Boylan wondered about just deregulating Mountain Bell. Larry Huss felt this legislation was still necessary. The PSC should still have some authority to rule. Danny Oberg felt we are seeing a movement towards more competition and that this legislation is a step in the right direction.

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 3/2

SENATE SEAT #

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens	X		
Senator Boylan	X		
Senator Fuller	X		
Senator Gage	X		
Senator Goodover	X		
Senator Kolstad	X		
Senator Neuman	E		
Senator Thayer	X		
Senator Williams	X		
Senator Weeding	X		

Each day attach to minutes.

EXHIBIT 4
BUSINESS & INDUSTRY
March 21, 1985

House Bill No. 577
Third Reading Copy

1) Page 3, l. 13
Following: "private"
Insert: "telecommunications"

2) Page 3, l.24
Following: 13].
Insert: "An occasional or accomodative use of a private telecommunication system by a third person is not a violation of this section."

3) Page 4, l.22
Following: "regulated:
Strike: "."
Insert: "or are not tariffed"

4) Page 4, l.22
Following: "regulated."
Strike" "Revenues and expenses"
Insert: "Expenses"

5) Page 4, l.23
Following: "regulated"
Insert: "or not tariffed"

6) Page 4, l.24
Following: "attributed to"
Strike: "or used to subsidize"

7) Page 5, l.24
Preceding: "COMPENSATORY"
Strike: "FULLY"
Insert" "COST"

8) Page 6, line 1
Following: "13]."
Insert: "(3) In determining applications under subsection (2), the commission shall consider the following factors:

(a) the number, size and distribution of alternative providers of service;

(b) the extent to which services are available from alternative providers in the relevant market;

(c) the ability of alternative providers to make functionally equivalent or substitute services readily available;

(d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and

(e) such other factors as the commission may prescribe through rulemaking which are appropiate to fulfill the purposes of the Act.

(4) Provided, however, that nothing in this section shall authorize the application of subsection (2) to any services for which there are no alternative providers of such services."

9) Page 6, 1.2
Strike: (3)
Insert: (5)

10) Page 6, 1.6
Following: "comparable"
Strike: the balance of 1.6 through 1.8
Insert: "to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available."

EXHIBIT 4
BUSINESS & INDUSTRY
March 21, 1985

HOUSE BILL 577, SECTION 7, AS AMENDED

Regulation of rates and charges. (1) As to that telecommunications service which is provided under regulation, the commission may establish specific rates, tariffs, or fares for the provision of such service to the public. The rates, tariffs, or fares must be just, reasonable, and nondiscriminatory.

(2) Alternatively, the commission may authorize the provision of regulated telecommunications service under such terms and conditions as may best serve the declared policy of this state. The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in lieu thereof may:

(a) totally detariff the service;

(b) detariff rates for the service but retain tariffs for service standards and requirements;

(c) detariff rates but require notice of price changes to the commission and subscribers;

(d) establish only maximum rates, only minimum rates, or permissible price ranges as long as the minimum rate is cost compensatory; or

(e) provide such other rate or service regulation as will promote the purposes of [sections 2 through 10 and 13].

(3) In determining applications under subsection (2), the commission shall consider the following factors:

(a) the number, size and distribution of alternative providers of service;

(b) the extent to which services are available from alternative providers in the relevant market;

(c) the ability of alternative providers to make functionally equivalent or substitute services readily available;

(d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonalbe rates; and

(e) such other factors as the commission may prescribe through rulemaking which are appropriate to fulfill the purposes of the Act.

(4) Provided, however, that nothing in this section shall authorize the application of subsection (2) to any services for which there are no alternative providers of such services.

(5) All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunications services are comparable if they are reasonable substitutes for one another, to the extent that subscribers generally would accept either service as meeting their needs.

STANDING COMMITTEE REPORT

MARCH 21 19 85

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration HOUSE BILL No. 577

third reading copy (blue color)

DEFINE REGULATED TELECOMMUNICATION SERVICE; ALLOW TRANSITION TO COMPETITI
(Haffey)

Respectfully report as follows: That HOUSE BILL No. 577

be amended as follows:

1. Page 3, line 13.
Following: "private"
Insert: "telecommunications"

2. Page 3, line 24.
Following: "13)."
Insert: "An occasional or accomodative use of a private telecommunicatior system by a third person is not a violation of this section."

3. Page 4, line 22.
Following: "regulated"
Insert: "or are not tariffed"
Following: "."
Strike: "Revenues and expenses"
Insert: "Expenses"

4. Page 4, line 23.
Following: "regulated"
Insert: "or not tariffed"

5. Page 4, line 24.
Following: "attributed to"
Strike: "or used to subsidize"

(continued on page 2)

~~DO PASS~~

~~DO NOT PASS~~

Chairman.

6. Page 5, line 24
Following: line 23
Strike: "FULLY"
Insert: "cost"

7. Page 6, line 2.
Following: line 1
Insert: "(3) In determining applications under subsection (2), the commission shall consider the following factors: (a) the number, size, and distribution of alternative providers of service; (b) the extent to which services are available from alternative providers in the relevant market; (c) the ability of alternative providers to make functionally equivalent or substitute services readily available; (d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and (e) such other factors as the commission may prescribe through rulemaking which are appropriate to fulfill the purposes of [the act]. (4) Nothing in this section shall authorize the application of subsection (2) to any services for which there are no alternative providers of such services."
Renumber: subsequent subsection

8. Page 6, lines 6 through 8.
Following: "comparable" on line 6
Strike: remainder of line 6 through "needs" on line 8
Insert: "to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available"

AND AS AMENDED
BE CONCURRED IN

Sen. Mike Halligan, Chairman

STATEMENT OF INTENT

HOUSE BILL 577

House Judiciary Committee

As stated in the purpose section of this act, it is the intent of the legislature to maintain universal availability of basic telecommunications service at affordable rates. At the same time, the legislature desires to make available to the general public the rapid advances in telecommunications technology brought about by competition. It is the intent of this act to provide the regulatory flexibility necessary to allow a transition to a competitive market environment in the telecommunications industry.

Under prior law there was no mechanism that would allow telecommunications utilities to respond to competitive situations. It is the intent of the legislature that the public service commission now have the authority to permit flexible pricing in those instances where it will promote healthy competition. For example, if two telecommunications utilities are effectively competing to provide long distance service to a market, the commission may allow those companies to change their rates without commission approval in response to competition. Depending upon the circumstances, the commission may detariff rates for the competitive services or allow the telecommunications

utilities to operate within permissible price ranges or implement some other form of regulation that is less restrictive than total rate regulation.

The legislature intends that the commission retain the power to protect ratepayer interests by totally regulating the rates for telecommunications services that are provided on a monopoly basis. It is intended that the commission be authorized to examine each service and market to determine when market conditions rather than total rate regulation can be relied upon to assure that adequate service will be provided at reasonable rates.

It is further intended that the commission have authority to take those actions necessary to assure that revenues from regulated telecommunications services are not used to subsidize nonregulated operations.

It is intended that the commission have authority to adopt rules, if needed, to develop standards for evaluating market conditions and criteria for determining that detariffing or rate flexibility is appropriate. The commission may also implement, by rule if necessary, such reporting requirements as are required to permit a proper allocation of common or joint costs and investments.

REFERENCE BILL

HB 577

HOUSE BILL NO. 577

INTRODUCED BY BRADLEY, RAMIREZ, HAFFEY, MARKS, JACK MOORE, KRUEGER, SPAETH, VAN VALKENBURG, M. WILLIAMS, PECK, KEENAN, J. HAMMOND, B. WILLIAMS, ADDY, THOMAS, HALLIGAN, HARP, BOYLAN, GALT, PAVLOVICH, D. BROWN, STEPHENS, B. BROWN, BACHINI, MANNING, KEYSER, O'HARA, MERCER

BY REQUEST OF THE PUBLIC SERVICE COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING TRANSITION TO COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY; DEFINING "REGULATED TELECOMMUNICATIONS SERVICE"; AMENDING SECTIONS 69-3-101, 69-3-201, AND 69-3-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 10 and 13] may be cited as the "Montana Telecommunications Act".

NEW SECTION. Section 2. Purpose. The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining universal service, it is further the policy of this state to encourage competition in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of [sections 1 through 10 and 13] to provide a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment.

NEW SECTION. Section 3. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the public service commission.

(2) "Private telecommunications service" means a system, including the construction, maintenance, or operation thereof, for the provision of telecommunications service or any portion of such service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

(3) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and

nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport. Regulated telecommunications service does not include the provision of terminal equipment used to originate or terminate such service, private telecommunications service, resale of telecommunications service, one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

(4) "Resale of telecommunications service" means the resale of regulated telecommunications service, with or without adding value, provided any value added would not otherwise be subject to regulation.

NEW SECTION. Section 4. Exemption for private TELECOMMUNICATIONS service. Construction, maintenance, or operation of a private telecommunications service does not constitute the provision of regulated telecommunications service, and a private telecommunications service is not subject to any of the provisions of this title. If any other person or entity, including the owners or shareholders of the entity owning or operating a private telecommunications service, uses the telecommunications service, whether for hire or not, the private telecommunications service is a regulated telecommunications service under [sections 1 through 10 and 13]. AN OCCASIONAL OR ACCOMODATIVE USE OF A PRIVATE TELECOMMUNICATION SYSTEM BY A THIRD PERSON IS NOT A

VIOLATION OF THIS SECTION.

NEW SECTION. Section 5. Manner of regulation of telecommunications service. (1) Before any person or entity provides regulated telecommunications service within the state of Montana, it shall file with the commission a notice including:

(a) the name and address of the provider;

(b) a narrative description of the regulated telecommunications service to be offered and the geographic area and markets to be served;

(c) initial tariffs for the regulated telecommunications service;

(d) such other information as the commission may require to accomplish the purpose of this chapter.

(2) The provision of any regulated telecommunications service does not subject the provider thereof to regulation of any other telecommunications services otherwise exempt under this chapter.

NEW SECTION. Section 6. Prohibition against cross-subsidization. (1) No provider of regulated telecommunications service may use current revenues earned or expenses incurred in conjunction with services subject to regulation under this chapter to subsidize services which are not regulated OR ARE NOT TARIFFED. ~~Revenues and expenses~~ EXPENSES incurred in conjunction with services not regulated

OR NOT TARIFFED under this chapter may not be attributed to ~~or---used---to--subsidize~~ services which are subject to regulation for any reason.

(2) Nothing in this section is to be construed to effect the regulatory treatment of revenues, expenses, and investment for telephone directory services currently authorized under this title.

NEW SECTION. Section 7. Regulation of rates and charges. (1) As to that telecommunications service which is provided under regulation, the commission may establish specific rates, tariffs, or fares for the provision of such service to the public. The rates, tariffs, or fares must be just, reasonable, and nondiscriminatory.

(2) Alternatively, the commission may authorize the provision of regulated telecommunications service under such terms and conditions as may best serve the declared policy of this state. The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in lieu thereof may:

(a) totally detariff the service;

(b) detariff rates for the service but retain tariffs for service standards and requirements;

(c) detariff rates but require notice of price changes to the commission and subscribers;

(d) establish only maximum rates, only minimum rates,

or permissible price ranges AS LONG AS THE MINIMUM RATE IS ~~FULLY~~ COST COMPENSATORY; or

(e) provide such other rate or service regulation as will promote the purposes of [sections 2 through 10 and 13].

(3) IN DETERMINING APPLICATIONS UNDER SUBSECTION (2), THE COMMISSION SHALL CONSIDER THE FOLLOWING FACTORS:

(A) THE NUMBER, SIZE, AND DISTRIBUTION OF ALTERNATIVE PROVIDERS OF SERVICE;

(B) THE EXTENT TO WHICH SERVICES ARE AVAILABLE FROM ALTERNATIVE PROVIDERS IN THE RELEVANT MARKET;

(C) THE ABILITY OF ALTERNATIVE PROVIDERS TO MAKE FUNCTIONALLY EQUIVALENT OR SUBSTITUTE SERVICES READILY AVAILABLE;

(D) THE OVERALL IMPACT OF THE PROPOSED TERMS AND CONDITIONS ON THE CONTINUED AVAILABILITY OF EXISTING SERVICES AT JUST AND REASONABLE RATES; AND

(E) SUCH OTHER FACTORS AS THE COMMISSION MAY PRESCRIBE THROUGH RULEMAKING WHICH ARE APPROPRIATE TO FULFILL THE PURPOSES OF [THE ACT].

(4) NOTHING IN THIS SECTION SHALL AUTHORIZE THE APPLICATION OF SUBSECTION (2) TO ANY SERVICES FOR WHICH THERE ARE NO ALTERNATIVE PROVIDERS OF SUCH SERVICES.

~~(3)~~(5) All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes

of this section, regulated telecommunications services are comparable ~~if--they--are--reasonable--substitutes--for--one another,--to--the--extent--that--subscribers-generally-would accept-either-service-as-meeting-their-needs~~ TO THE EXTENT ALTERNATIVE PROVIDERS CAN MAKE FUNCTIONALLY EQUIVALENT SUBSTITUTES OR SUBSTITUTE SERVICES READILY AVAILABLE.

NEW SECTION. Section 8. Forbearance of rate regulation to facilitate competition. (1) In accordance with the provisions of this section, the commission shall forbear regulation as to rates, tariffs, fares, or charges to facilitate competition and shall authorize the provision of all or any portion of regulated telecommunications service under stated or negotiated terms to any person or entity that has acquired or is contemplating acquisition of, through construction, lease, or any other form of acquisition, similar telecommunications service from an alternative source.

(2) At any time, the provider of regulated telecommunications service may file a verified application with the commission for forbearance of regulation to facilitate competition. The application shall describe the telecommunications service to be offered, the customer to be served, and the party or parties offering similar service, together with such other information and in such form as the commission may prescribe. Such additional information must

be reasonably related to the determination of the existence of an alternative offer but may not require information relating to the cost of providing such service.

(3) The commission shall approve or deny any such application for forbearance of regulation to facilitate competition within 10 days after the filing of the application, except that the commission may by order defer action for an additional 5-day period. If the commission has not acted on any application within the permitted time period, the application is considered granted. The commission shall deny the application only upon a finding that the application is incomplete or that the subject or similar service is not being offered to the customer by parties other than the applicant.

(4) The provisions of 2-4-601, relating to notice and hearing, do not apply to this section.

(5) Upon approval of the application, the provider of telecommunications service may negotiate with such person or entity for the provision of such service without regard to its tariffs on file and approved by the commission.

(6) Within 10 days after the conclusion of such negotiations, the provider of regulated telecommunications service shall file with the commission the final contract or other evidence of the service to be provided, together with the charges and other conditions of the service.

Thereafter, the provider of regulated telecommunications service may provide such service to the customer without regard to its tariffs on file and approved by the commission.

(7) Services provided pursuant to subsection (1) remain subject to the regulatory powers of the commission.

NEW SECTION. Section 9. Examination of books and records. Nothing in [sections 1 through 10 and 13] precludes the commission from exercising its authority under the provisions of 69-3-202. The commission may require such accounting or reporting systems as are necessary to allow a proper allocation of investments, costs, or expenses that are joint or common to both regulated telecommunications services and other services or to both tariffed regulated telecommunications services and nontariffed regulated telecommunications services.

NEW SECTION. Section 10. Rulemaking authority. The commission may adopt rules to implement [sections 1 through 10 and 13].

Section 11. Section 69-3-101, MCA, is amended to read:

"69-3-101. Meaning of term "public utility". (1) The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court

whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(a) heat;

(b) street-railway service;

(c) light;

(d) power in any form or by any agency;

(e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

(f) ~~telegraph or telephone~~ regulated telecommunications service.

(2) The term "public utility" does not include:

(a) privately owned and operated water, sewer, or combination systems that do not serve the public; or

(b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23."

Section 12. Section 69-3-201, MCA, is amended to read:

"69-3-201. Utilities to provide adequate service at reasonable charges. Every public utility is required to furnish reasonably adequate service and facilities. The

charge made by any public utility for any heat, light, power, water, ~~telegraph, or telephone~~ regulated telecommunications service produced, transmitted, delivered, or furnished or for any service to be rendered as or in connection with any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful."

NEW SECTION. Section 13. Exception. Nothing in [this act] affects the exemption from regulation provided by 35-18-104.

Section 14. Section 69-3-321, MCA, is amended to read:

"69-3-321. Complaints against public utility -- hearing. (1) The commission shall proceed, with or without notice, to make such investigation as it may deem necessary upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club; by any body politic or municipal organization or association, the same being interested; or by any person, firm, or corporation, provided such person, firm, or corporation is directly affected thereby, that:

(a) any of the rates, tolls, charges, or schedules or any joint rate or rates are in any way unreasonable or unjustly discriminatory;

(b) any regulations, measurements, practices, or acts whatsoever affecting or relating to the production,

transmission, delivery, or furnishing of heat, light, water, or power, or regulated telecommunications service, or any service in connection therewith ~~or the conveyance of any telegraph or telephone message or any service in connection therewith~~ is in any respect unreasonable, insufficient, or unjustly discriminatory; or

(c) any service is inadequate.

(2) No order affecting such rates, tolls, charges, schedules, regulations, measurements, practices, or acts complained of shall be entered without a formal hearing, except the commission may issue an order to provide service to a residential consumer pending a hearing on a complaint by such consumer or by the consumer counsel on behalf of such consumer against a public utility, providing that the hearing is held within 20 days unless further delayed by consent of all parties."

NEW SECTION. SECTION 15. NO PREEMPTION OF LAWS GOVERNING ANTICOMPETITIVE ACTIVITY. NOTHING IN [SECTIONS 1 THROUGH 10 AND 13] IN ANY WAY PREEMPTS, ABROGATES, OR OTHERWISE AFFECTS ANY RIGHT, LIABILITY, OR OBLIGATION ARISING FROM ANY FEDERAL OR STATE LAW REGARDING UNFAIR BUSINESS PRACTICES OR ANTICOMPETITIVE ACTIVITY.

NEW SECTION. Section 16. Codification instruction. Sections 1 through 10 and 13 are intended to be codified as an integral part of Title 69, chapter 3, and the provisions

of Title 69, chapter 3, apply to sections 1 through 10 and 13.

NEW SECTION. Section 17. Effective date. This act is effective on passage and approval.

-End-